S. Hrg. 98-171

S. 727—S. 884—S. 973

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 727

TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO SET-ASIDE CERTAIN JUDGMENT FUNDS OF THE THREE AFFILIATED TRIBES OF FORT BERTHOLD RESERVATION IN NORTH DAKOTA, AND FOR OTHER PURPOSES

S. 884

TO PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED THE RED LAKE BAND OF CHIPPEWA INDIANS IN DOCKET NUMBERED 15-72 OF THE UNITED STATES COURT OF CLAIMS

S. 973

TO MAKE TECHNICAL AMENDMENTS TO THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT AND OTHER ACTS

APRIL 28, 1983

WASHINGTON, D.C.

U.S. GOVERNMENT PRINTING OFFICE

22-808 O WASHINGTON: 1983

S961-13

SELECT COMMITTEE ON INDIAN AFFAIRS

MARK ANDREWS, North Dakota, *Chairman*

BARRY GOLDWATER, Arizona	JOHN MELCHER, Montana
SLADE GORTON, Washington	DANIEL K. INOUYE, Hawaii
FRANK H. MURKOWSKI, Alaska	DENNIS DeCONCINI, Arizona

PAUL ALEXANDER, *Staff Director*

CONTENTS

	Page
S. 727	2
S. 884	6
S. 973	9

WITNESSES

Andrade, Ron, executive director, National Congress of American Indians	58
Prepared statement	58
Coffee, Pete, member of the tribal council, Three Affiliated Tribes of the Fort Berthold Reservation	36
Durenberger, Hon. Dave, a U.S. Senator from the State of Minnesota	11
Edwards, Rodney J., attorney, Edwards, Edwards & Bodin, counsel for the Red Lake Band of Chippewa Indians, prepared statement	16
Fritz, John, Deputy Assistant Secretary for Indian Affairs, Department of the Interior	47
Prepared statement	47
Hobbs, Charles A., attorney for the Three Affiliated Tribes of the Fort Berthold Reservation	36
Prepared statement	43
Jourdain, Roger, chairman, Red Lake Band of Chippewa Indians	12
Prepared statement	12
McNabb, Sandy, tribal atttorney for the Red Lake Band of Chippewa Indians	12
Mason, Nat, secretary, Three Affiliated Tribes of the Fort Berthold Reservation	36
Mulnary, Donald, member of the tribal council, Three Affiliated Tribes of the Fort Berthold Reservation	36
Rhoades, Dr. Everett, Director, Indian Health Service, Department of Health and Human Services	56
Prepared statement	57
Walker, Tillie, vice chairwoman, Three Affiliated Tribes of the Fort Berthold Reservation	36
Prepared statement	36
White, Gerald, member, tribal council, Three Affiliated Tribes of the Fort Berthold Reservation	36

MATERIAL SUBMITTED FOR THE RECORD

Red Lake Band of Chippewa Indians, Resolution No. 65–83	13
Letter from Rodney J. Edwards, chairman, Red Lake Band of Chippewa Indians, with enclosed statement	15
Three Affiliated Tribes Tribal Business Council, excerpts from minutes of meeting, Nov. 12, 1981	44
Three Affiliated Tribes of the Fort Berthold Reservation, resolutions	45
Memorandum from M. R. Tidwell, Solicitor, Department of the Interior, to Acting Deputy Assistant for Indian Affairs, in re the Indian Self-Determination and Educational Assistance Act—Revision of regulations	53
Letter from Tim Love, governor, Penobscot Indian Nation, to Kenneth Smith, Assistant Secretary for Indian Affairs, Department of the Interior	59

APPENDIX

Additional Material Submitted for the Record

	Page
Letter from Kenneth Smith, Assistant Secretary for Indian Affairs, DOI; to Senator William S. Cohen	65
Letter from R. Willis Dixey, chairman, Shoshone-Bannock Tribes; to Senator Andrews	66
Letter from Robert J. Clark, executive director, Bristol Bay Area Health Corp., Dillingham, Al.; to Senator Andrews	69
Letter from S. Bobo Dean, attorney, Hobbs, Straus, Dean & Wilder; to Senator Andrews	70

S. 727—S. 884—S. 973

APRIL 28, 1983

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 2:35 p.m., in room SD-538, Senator Mark Andrews (chairman) presiding.

Present: Senators Andrews, DeConcini, and Durenberger.

Staff present: Paul Alexander, staff director; Peter S. Taylor, general counsel; and Max Richtman, minority staff director.

Senator ANDREWS. The hearing will come to order.

This afternoon we are going to hear testimony on three bills: S. 727, to authorize the Secretary of the Interior to set aside certain judgment funds of the Three Affiliated Tribes of the Fort Berthold Reservation for a hospital or health care facility fund; S. 884, to provide for the use and distribution of judgment funds awarded the Red Lake Band of Chippewa Indians; and S. 973, to make technical amendments to the Indian Self-Determination and Education Assistance Act and three other acts enacted in the 97th Congress.

Without objection, I will place a copy of S. 727, S. 884, and S. 973 in the hearing record at this point.

[The bills follow:]

98TH CONGRESS
1ST SESSION

S. 727

To authorize the Secretary of the Interior to set-aside certain judgment funds of the Three Affiliated Tribes of Fort Berthold Reservation in North Dakota, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 8 (legislative day, MARCH 7), 1983

Mr. ANDREWS (for himself and Mr. BURDICK) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To authorize the Secretary of the Interior to set-aside certain judgment funds of the Three Affiliated Tribes of Fort Berthold Reservation in North Dakota, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act shall apply notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401 et seq.), or any other law, regulation, or plan promulgated pursuant thereto.

SEC. 2. (a) The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall deposit into a separate account—

(1) $113,777.10 of the funds appropriated in satisfaction of the judgments awarded the Three Affiliated Tribes of Fort Berthold Reservation in dockets numbered 350–G and 54–81 L of the United States Court of Claims, plus

(2) all interest and investment income accrued on the funds described in clause (1) from the date on which the transcript of such judgment was filed with the Comptroller General of the United States,

and any funds so deposited shall be distributed and used only as provided in this Act.

(b) Any funds deposited by the Secretary in a separate account under subsection (a) shall be held and invested by the Secretary in accordance with the first section of the Act of June 24, 1938 (52 Stat. 1037).

(c) Any funds deposited by the Secretary in a separate account under subsection (a), including any interest or investment income accrued thereon, may be distributed, with the approval of the Secretary, to the governing body of the Three Affiliated Tribes of Fort Berthold Reservation for use in the planning and development of a hospital or a health care facility to serve the needs of such tribes.

(d) Any funds deposited by the Secretary in a separate account under subsection (a), including any interest or investment income accrued thereon, which have not been distributed by the Secretary under subsection (c) prior to the date which is five years after the date of enactment of this Act may be distributed to the governing body of the Three Affiliated Tribes of Fort Berthold Reservation for use in any tribal program which is authorized by such governing body and approved by the Secretary.

SEC. 3. (a) The Secretary shall distribute to each eligible individual out of funds appropriated in satisfaction of the judgments awarded the Three Affiliated Tribes of Fort Berthold Reservation in dockets numbered 350–G and 58–81 L of the United States Court of Claims the sum of—

(1) $4,000, and all interest and investment income accrued thereon since August 5, 1982, plus

(2) $45.16, and all interest and investment income accrued thereon since December 13, 1982.

(b) For purposes of this section, the term "eligible individual" means any individual—

(1) who filed an application with the Three Affiliated Tribes of the Fort Berthold Reservation before July 10, 1982, to share in the judgment awards described in subsection (a),

(2) whom the Secretary determines to be eligible to share in such judgment awards, and

(3) who has not received any distribution from the Secretary with respect to such judgment awards at any time prior to the date of enactment of this Act.

SEC. 4. Any funds appropriated in satisfaction of the judgments described in sections 3(a) which remain uncommitted after the deposit described in section 2 and the distribution described in section 3 are made by the Secretary shall be distributed and used in accordance with the programing aspect of the plan for the use and distribution of the funds appropriated in satisfaction of such judgments which became effective on May 26, 1982, pursuant to section 5 of the Act of October 19, 1973 (87 Stat. 468; 25 U.S.C. 1405).

22-808 O - 83 - 2

98TH CONGRESS
1ST SESSION

S. 884

To provide for the use and distribution of funds awarded the Red Lake Band of Chippewa Indians in docket numbered 15–72 of the United States Court of Claims.

IN THE SENATE OF THE UNITED STATES

MARCH 22 (legislative day, MARCH 21), 1983

Mr. DURENBERGER (for himself and Mr. BOSCHWITZ) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To provide for the use and distribution of funds awarded the Red Lake Band of Chippewa Indians in docket numbered 15–72 of the United States Court of Claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401, et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the funds appropriated with respect to the judgment awarded the Red Lake Band of Chippewa Indians in docket numbered 15–72 of the United States Court of Claims (less attorney fees and litigation expenses), including all interest and invest-

ment income accrued thereon, shall be distributed and used as follows:

(1) Eighty per centum of such funds shall be distributed by the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") in the form of per capita payments (in sums as equal as possible) to all enrolled members of the Red Lake Band of Chippewa Indians who are living on the date of enactment of this Act.

(2) Twenty per centum of such funds, including any interest or income accrued thereon, shall be—

(A) held in trust and invested by the Secretary for the benefit of the members of the Red Lake Band of Chippewa Indians, and

(B) distributed from such trust, subject to the approval of the Secretary, to the governing body of such tribe for the purpose of making expenditures to meet common tribal needs or educational requirements.

SEC. 3. (a) Any payment of a per capita share of funds to which a living, competent adult is entitled under this Act shall be paid directly to such adult.

(b) Any per capita share of funds to which a deceased individual is entitled under this Act shall be paid, and the

beneficiaries thereof determined, under regulations prescribed by the Secretary.

(c) Any per capita share of funds to which a legally incompetent individual or an individual under eighteen years of age is entitled under this Act shall be paid in accordance with such procedures (including the establishment of trusts) as the Secretary determines to be necessary to protect the interests of such individual.

SEC. 4. None of the funds distributed under this Act shall be—

(1) subject to Federal, State, or local income taxes, or

(2) considered income or resources in determining either eligibility for, or the amount of assistance under, Federal, State, or local programs.

98TH CONGRESS
1ST SESSION

S. 973

To make technical amendments to the Indian Self-Determination and Education Assistance Act and other Acts.

IN THE SENATE OF THE UNITED STATES

APRIL 5, 1983

Mr. ANDREWS introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To make technical amendments to the Indian Self-Determination and Education Assistance Act and other Acts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Indian Self-Determination and Education Assistance Act (Public Law 93–638; 88 Stat. 2203) is amended by inserting after section 8 the following new section:

"SEC. 9. The provisions of this Act shall not be subject to the requirements of the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95–224; 92 Stat. 3).".

SEC. 2. The Act of October 15, 1982 (Public Law 97–344; 96 Stat. 1645), relating to certain restricted land in

Kansas, is amended by striking out "the southeast quarter northwest quarter" in paragraph (2) and inserting in lieu thereof "the south 20 acres of the east 60 acres of the northwest quarter".

SEC. 3. The first section of Public Law 97–386, relating to the reservation of the Pascua Yaqui Tribe of Arizona, is amended by inserting "located in township 15 south, range 12 east, Gila and Salt River Meridian," after "tracts of lands".

SEC. 4. (a) Subsections (a) and (b) of section 2415 of title 28, United States Code, are amended by striking out "Indian Claims Act of 1982" each place it appears and inserting in lieu thereof "Indian Claims Limitation Act of 1982".

(b) The last proviso in the first paragraph under the heading "Administrative Provisions", relating to the Bureau of Indian Affairs, of title I of Public Law 97–394, is amended by striking out "The following" and inserting in lieu thereof "Sections 2 through 6 of this Act".

Senator ANDREWS. We will first receive testimony from our colleague, Senator Durenberger from Minnesota. We are fortunate to have him here today. As I understand it, he has a short statement he would like to make.

Senator, we would be delighted to hear from you.

STATEMENT OF HON. DAVE DURENBERGER, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator DURENBERGER. Thank you very much, Mr. Chairman. Thanks for allowing me to appear before your committee to speak in support of a bill I introduced, S. 884. I thank you for taking my testimony out of order.

The members of the Red Lake Band of Chippewas were awarded $600,000 by the Court of Claims on February 6, 1981, as compensation for damage to timber caused by the National Guard during the Korean war. It has now been over 2 years since entry of the judgment on their claim. The tribal members have not received their per capita payments, nor has the tribal government received its share of the judgment. S. 884 would order distribution of that judgment.

This legislation is necessary because the Department of the Interior failed to submit a distribution plan to Congress within 180 days as mandated by Public Law 94–134. It is doubly important as a result of Public Law 97–458, which would grant the Secretary of the Interior yet another year to submit a distribution plan. This simply should not be allowed to occur.

My bill earmarks 80 percent of the funds for distribution amongst the tribal members and 20 percent for use by the tribal government. The plan for use of the tribal government funds would require approval by the Secretary of the Interior.

As you know, the economic climate on Indian reservations is particularly poor. Speedy approval and passage of this bill would enable the Secretary of the Interior to begin the process of distribution to individuals who badly need these funds. This, in turn, would improve the economic conditions of those individuals and the surrounding business community. Enactment of this legislation promptly would signal our commitments to native American citizens.

Mr. Chairman, I would hope and request that your committee will act favorably and soon on S. 884 and report it accordingly to the Senate for passage.

Senator ANDREWS. We appreciate very much your testimony. It is very helpful to us. As the chief sponsor of the bill, we recognize that we will have your great help on the Floor if it is reported out of committee. That means a lot.

We thank you again.

Continuing on with our consideration of S. 884, I would now like to call on Roger Jourdain, chairman, Red Lake Band of Chippewa Indians, to follow his Senator's presentation.

Roger, I understand you have a statement that you would like to make. Please proceed.

STATEMENT OF ROGER JOURDAIN, CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS, RED LAKE, MINN., ACCOMPANIED BY SANDY McNABB, TRIBAL ATTORNEY, McNABB & PRESTON, WASHINGTON, D.C.

Mr. JOURDAIN. Mr. Chairman, my name is Roger Jourdain, chairman, Red Lake Band of Chippewa Indians.

We live up in northern Minnesota. That is east of the Red River in the eastern part of North Dakota, the State that you represent.

Senator ANDREWS. Not a bad territory, Mr. Jourdain. I appreciate your CARE package. [Laughter.]

Mr. JOURDAIN. Well, back in the early days we were commonly referred to as the Indians east of the river. They never said Chippewas or Ojibway or anything else. They just said, "east of the river."

But we are here, and we are very happy to have the opportunity to come before your committee, finally, to see if we can generate some action to get our damage case out to the members of the Red Lake Band so they can have some walking around money, if nothing else. We spend all of our money in the city of Bemidji in the trade area, which represents about 12,000 there, and is going to recycle there about 20 or 30 times until some conservative Swiss bank account gets a hold of it.

If they were all like Indians, there would be no recession. When we get a paycheck, we spend it right away. We put it in circulation.

Senator ANDREWS. Right. Sometimes you spend it before you get it. [Laughter.]

Mr. JOURDAIN. I have already borrowed it coming down here.

So, we have our testimony. I want to say publicly that we want to thank the Minnesota Senators, Dave Durenberger, who just testified here for S. 884, and of course, Senator Rudy Boschwitz. I want to thank them for their support of the bill.

I hope you see, Senator, our duly elected council members: Tony Wilson, Punch Baird, Dan Raincloud, Lawrence Bidou, and Alan English. They are all duly elected. They are not these self-appointed Indians that you run across. Here is our tribal attorney from Duluth.

We have been working hard to try to elevate our economic conditions at Red Lake, so we would appreciate the passage of this bill. Be sure to hold the people who are accountable to it and get it out forthwith.

Senator ANDREWS. Thank you very much. We have your full written statement which we will insert into the record at this point.

[The statement follows:]

PREPARED STATEMENT OF ROGER A. JOURDAIN, CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS, RED LAKE, MINN.

Mr. Chairman and Members of the Committee, on behalf of the Tribal Council of the Red Lake Band of Chippewa Indians and the people of the Red Lake Band, I am pleased to appear before this Committee to support S. 884, a bill to provide for the distribution of judgment funds awarded to the Red Lake Band in United States Court of Claims, Docket No. 15–72. I present with my statement Tribal Council Resolution No. 65–83 supporting the bill.

At the outset, I want to thank Senators Dave Durenberger and Rudy Boschwitz of Minnesota for their support in introducing this much needed bill which provides for the distribution of a $600,000.00 judgment fund resulting from a

claim for damage to our timber caused by the National Guard during the Korean War. The claim was settled by the Government and judgment was entered on February 6, 1981. Funds to satisfy the judgment were appropriated on February 18, 1981. Our claims attorney Rodney J. Edwards has submitted a statement providing further details of the claim.

Immediate distribution of these judgment funds is necessary because of the severe economic crisis on the Red Lake Reservation. Unemployment is extremely high, over 63%, according to BIA statistics. The number of people on the reservation demanding tribal services has risen due to the poor economic conditions off the Reservation. The number of people requiring government assistance has increased drastically, as illustrated by a more than 30% increase in General Assistance rolls. Quick action on the distribution of these funds will provide some assistance to our people and our government, particularly if distribution can be coordinated with the distribution of a larger judgment fund which has already passed Congress and which we hope will be available later this spring. The combination of these funds will provide a useful per capita payment to our people and needed funds for the tribe's long delayed economic development plans.

The plan embodied in S. 884, is exactly the same as the one submitted to Congress for distribution of our $8.1 million claim. That plan was approved by the Bureau of Indian Affairs, was submitted to Congress under the Distribution of Judgment Funds Act, 25 U.S.C. § 1401–14, and was approved by Congress on March 14, 1983.

It is unfortunate that it is necessary to have legislation of this type to obtain distribution of this judgment. The BIA has met none of its obligations under the Distribution of Judgment Funds Act and there is no immediate prospect for action from the BIA despite our repeated efforts to get action. It should not be necessary for Indian tribes to wait over two years to collect the money that the Courts awarded them and that Congress appropriates.

Again, I wish to thank this Committee and our Senators for their help and quick action to provide the Red Lake Band with these much needed funds.

RED LAKE BAND OF CHIPPEWA INDIANS,
Red Lake, Minn.

RESOLUTION No. 65–83

Be it resolved, that the Tribal Council for and on behalf of the Red Lake Band of Chippewa Indians, does hereby endorse and consent to the use and distribution of their judgment funds as set forth in S. 884, a bill to provide for the use and distribution of funds awarded the Red Lake Band of Chippewa Indians in Docket No. 15–72 of the United States Court of Claims.

Be it further resolved, that the Assistant Secretary—Indian Affairs, United States Department of Interior is hereby requested to also endorse and support the use and distribution of the Judgment funds as set forth in S. 884, and present his endorsement and support to the United States Senate, Select Committee on Indian Affairs at hearing scheduled to be held on April 28, 1983, at 2:30 p.m. in Senate Dirksen 538.

For: 9.

Against: 0.

We do hereby certify that the foregoing resolution was duly presented and enacted upon at the Regular Meeting of the Tribal Council held on Tuesday, April 19, 1983, with a quorum present at the Tribal Office, Red Lake, Minnesota.

ROGER A. JOURDAIN,
Chairman.

ROYCE GRAVES, Sr.,
Secretary.

Senator ANDREWS. I would like to ask you a couple of questions.

Under the Distribution of Judgment Funds Act of 1973, as amended, the Secretary of the Interior is authorized to submit a judgment fund distribution plan to the Congress, thus eliminating the need for specific legislation. Why then is this legislation necessary?

Mr. JOURDAIN. Because, going back to March, we passed a resolution with a plan and submitted it to the Bureau of Indian Affairs. The Bu-

reau failed to recognize the mandate of the Congress in 1972 under the Federal distribution plan.

We would have to go through the entire process with hearings and so on. It might take a month of Sundays or a month of holidays before it would reach the people back on the reservation. So, it has been long delayed and overlooked.

Senator ANDREWS. You know, we just adopted a judgment fund distribution plan for your Red Lake Band in an amount in excess of $8 million. This plan was the subject of public hearings around the middle of last year at Red Lake.

Is there any reason to believe that a public hearing on the plan encompassed in this legislation would result in any different testimony than the $8 million judgment?

Mr. JOURDAIN. None whatsoever. I will tell you why. We have our attorneys, Edwards, Edwards & Bodin, from Duluth. They developed this case when the National Guard went out there and indiscriminately destroyed our forest in target practicing.

They went into the sawmills and destroyed the sawmill equipment: the blades and the saws. So, we were asked if we would accept a settlement of $600,000. It was brought before the whole council, and the council then decided that was about the best recovery we could make.

Then, after we did accept the offer of $600,000, we passed a resolution offering it to the members of the Red Lake Band to vote on it as a referendum, yes or no. It was accepted widely by the Red Lake Band.

Senator ANDREWS. That solves our problem.

In the record I would like to place a letter from Mr. Rodney Edwards, directed to me, including a written statement and other documents in support of the bill. We will make that a part of the record at this point.

[The letter with enclosures follows. Testimony resumes on p. 36.]

LAW OFFICES
EDWARDS, EDWARDS & BODIN
318 ALWORTH BUILDING
DULUTH, MINNESOTA 55802
TELEPHONE 218 727 7431

RODNEY E. EDWARDS
JAMES P. BODIN

RODNEY J. EDWARDS OF COUNSEL
ALSO MEMBER OF WISCONSIN BAR

April 22, 1983

RECEIVED APR 27 1983

Honorable Mark Andrews, Chairman
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510

Re: S. 884 - Hearing April 28, 1983

Dear Chairman Andrews:

On behalf of Roger Jourdain, Chairman, Red Lake Band of Chippewa Indians, we acknowledge receipt of your letter dated April 11, 1983, informing him of the hearing to be held on April 28, 1983, on S. 884, a bill to provide for the use and distribution of funds awarded the Red Lake Band of Chippewa Indians, by Court of Claims Docket 15-72.

Enclosed is written statement in support of the bill submitted by our office as General Counsel for the Red Lake Band.

I expect to be at the hearing, which you informed Roger Jourdain, will be held at 2:30 P.M., on April 28, 1983, in Senate Dirksen 538. Roger Jourdain will also be present as well as several Tribal Council members.

Very truly yours,

Rodney J. Edwards

RODNEY J. EDWARDS

RJE:df
Enclosures

cc/w.encs: All Tribal Officers and Councilmen, Red Lake Band
Honorable David Durenberger
Honorable Rudy Boschwitz
Kenneth Smith, Assistant Secretary - Indian Affairs

Statement of Rodney J. Edwards, of Edwards, Edwards & Bodin, Duluth, Minnesota, General Counsel for the Red Lake Band of Chippewa Indians, on S. 884, a bill

"TO PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED THE RED LAKE BAND OF CHIPPEWA INDIANS IN DOCKET NUMBERED 15-72 OF THE UNITED STATES COURT OF CLAIMS"

before the Select Committee on Indian Affairs, United States Senate, April 28, 1983.

Mr. Chairman and Members of the Select Committee:

The use and distribution of funds awarded the Red Lake Band of Chippewa Indians in docket numbered 15-72 of the United States Court of Claims, set forth in S. 884, introduced by Mr. Durenberger (for himself and Mr. Boschwitz), has been approved and is supported by the Red Lake Band of Chippewa Indians and the Red Lake Band requests that Congress proceed with the enactment of the bill.[1/]

The Litigation and Claims Settled by the Judgment

By judgment of the United States Court of Claims entered February 6, 1981, the Red Lake Band of Chippewa Indians was awarded recovery in the sum of $600,000 in Docket 15-72 [2/]. The Red Lake Band of Chippewa Indians claims involved in Docket 15-72 were for damages to the Red Lake Indian Reservation's standing timber and tribal enterprises caused by the embedment of the projectiles from 50-caliber steel jacketed bullets in standing timber on the Reservation in the area of an anti-aircraft firing range, which was in operation during the Korean War in 1950, 1951 and 1952, for the purpose of training National Guard Units from several states in anti-aircraft firing. The projectiles had become concealed by the natural growth of the standing timber and their presence was not discovered until logging operations commenced in the firing range area in about 1970, at which time Indian loggers ran into the concealed projectiles with their chain saws when cutting the standing timber, the Red Lake Indian sawmill reported saw blades were broken from striking the concealed projectiles, when the logs were run through the sawmill for cutting into lumber, and the Red Lake Indian Cedar Fence Plant reported saws and planers were damaged from running into the concealed projectiles. The suit in Docket 15-72 was filed in the Court of Claims in 1972. Trial was held on the issue of the United States liability before the Trial Judge of the Court at Duluth, Minnesota, in 1979.

At the trial officials of the Red Lake Agency, Bureau of Indian Affairs, who were in office in 1951, 1952 and 1953 when the damage occurred, including Frell Owl, Superintendent, Cooper Carey, Chief Forester and Assistant Sawmill Manager, and Parker Arthur, Sawmill Manager, testified adversely to the Red Lake Band claim. In 1980 settlement of the claims in Docket 15-72 was negotiated with the Department of Justice Attorneys which resulted in the judgment of the U. S. Court of Claims entered February 6, 1981.

1/ Resolution No. 65-83 of the Tribal Council, Red Lake Band of Chippewa Indians, adopted at Red Lake, Minnesota, April 19, 1983 - Exhibit A.

2/ Judgment United States Court of Claims in Red Lake Band of Chippewa Indians vs. United States, entered February 6, 1981 - Exhibit B.

Red Lake Band's efforts to Secure Congressional Approval of a Plan for Use and Distribution of the Judgment Funds

One of the considerations by the Red Lake Band for entering into the settlement of the claims in docket 15-72, was the elimination of serveral years' delay in the Indians receiving the benefit of the recovery, that would have resulted if the case was litigated to final conclusion. Anticipating that the judgment funds would be made available under a plan for their use and distribution to be submitted to Congress by the Secretary of Interior pursuant to the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401, et seq.) within the 180 day period specified in Section 2 of the Act, the Tribal Council of the Red Lake Band submitted to the Bureau of Indian Affairs a proposed plan for the use and distribution of the judgment funds by resolution No. 32-81, adopted March 27, 1981 [3]. This was followed up with repeated requests from the Red Lake Band by telephone, letter, and personal contact with Bureau of Indian Affairs in Washington, D.C., Minneapolis Area Office, and Red Lake Agency Office to proceed with submission of the plan to Congress as required by the provisions of the Act of October 19, 1973, which were ignored otherwise the distribution of the judgment funds would have been accomplished long before this.

Because the Secretary of Interior failed to submit the plan to Congress within the 180 days required by Public Law 93-134, the Tribal Council of the Red Lake Band by resolution No. 114-82, adopted June 8, 1982, and letter to Honorable David Durenberger dated June 8, 1982, with copies to the entire Minnesota Congressional delegation, submitted a proposed bill requesting its introduction and support for the use and distribution of the judgment funds [4]. The proposed bill was substantially in substance the same as S. 884. On September 30, 1982, Mr. Durenberger (for himself and Mr. Boschwitz) introduced S. 2994 in the 97th Congress 2d Session, which contained the same provisions as the present bill S. 884 [5]. Bill S. 2994 was introduced the second to the last day of the Congressional session, and it was hoped the bill would have been adopted when Congress reconvened for a "lame duck" session after the national elections. No further Congressional action was taken on S. 2994.

At the request of the Red Lake Band, Mr. Durenberger reintroduced S. 2994 in the 98th Congress, 1st Session as bill S. 884.

3/ Resolution No. 32-81 of the Tribal Council, Red Lake Band of Chippewa Indians, adopted at Red Lake, Minnesota, March 27, 1981 - Exhibit C.

4/ Letter to Honorable David Durenberger from Tribal Council, Red Lake Band, with enclosures dated June 8, 1982 - Exhibit D.

5/ Bill S 2994 - 97th Congress 2d Session - to provide for the use and distribution of funds awarded the Red Lake Band of Chippewa Indians in docket numbered 15-72 of the United States Court of Claims - Exhibit E.

Conculsion

In the last days of the 97th Congress, legislation was adopted amending the Indian Distribution of Judgments Act of October 19, 1973, (87 Stat. 466, 25 U.S.C. 1401 et seq.). The legislation was signed by the President on January 12, 1983, and has been designated Public Law 97-458. The amendment allows the Secretary a year from January 12, 1983, to submit a distribution plan. This means that the Secretary can now take until January 12, 1984, to submit a plan for the distribution of the $600,000 judgment of the Red Lake Band entered by the Court of Claims on February 6, 1981, and the plan would not become effective until the expiration of 60 days period (excluding days on which either the House of Representatives or the Senate is not in session because of adjournment of more than three calendar days to a day certain) beginning on the day the plan is submitted. Assuming the Secretary of Interior submits a plan, this procedure would amount to over three (3) years elapsing before the Red Lake Band can have the use and distribution of their judgment funds in about May of 1984. To date the Secretary of Interior has not initiated any of the procedures required by the Act of October 19, 1973, as amended, for submission of a plan to Congress. Judging from past experience, the Secretary of Interior may not even submit a plan. Considering that the Red Lake Band has already waited over two (2) years and the Secretary of Interior had no objection to S. 2994 introduced in the 97th Congress and we believe has no objections to S. 884 presently before the Committee, we urge the enactment of S. 884.

Unemployment on the Red Lake Indian Reservation has reached a peak of about 90%, this money is needed by the Red Lake Band members to provide the necessities of life. The distribution of the money now, when it is needed, will have a significant impact on the depressed area of Northern Minnesota for both Indian and non-Indian. The distribution of the money will have widespread effect in the non-Indian communities near the Reservation and on the Iron Range, where the iron mining companies have practically closed down, and unemployment is about 40%.

LIST OF EXHIBITS

EXHIBIT	
A	Resolution No. 65-83 of the Tribal Council, Red Lake Band of Chippewa Indians, adopted at Red Lake, Minnesota, April 19, 1983.
B	Judgment United States Court of Claims in Red Lake Band of Chippewa Indians vs. United States, entered February 6, 1981.
C	Resolution No. 32-81 of the Tribal Council, Red Lake Band of Chippewa Indians, adopted at Red Lake, Minnesota, March 27, 1981.
D	Letter to Honorable David Durenberger from Tribal Council, Red Lake Band, with enclosures, dated June 8, 1982.
E	Bill S. 2994 - 97th Congress 2d Session - to provide for the use and distribution of funds awarded the Red Lake Band of Chippewa Indians in docket numbered 15-72 of the United States Court of Claims.

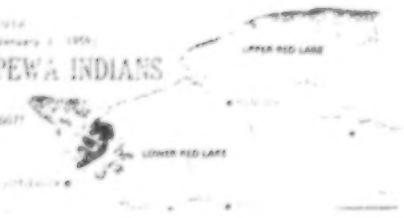
OFFICERS
ROGER A. JOURDAIN, Chairman
ROYCE GRAVES, SR. Secretary
JAMES STRONG, Treasurer

DISTRICT REPRESENTATIVES
DAN PARISIEN, JR.
ANTHONY WILSON
GEORGE F. JONES
JOSEPH BARRETTE
GERALD F. BRUN
THOMAS P. STATELY, JR.
LAWRENCE BEDEAU
ALLEN ENGLISH, JR.

ADVISORY COUNCIL
HEREDITARY CHIEFS

LEGAL COUNSEL
EDWARDS, EDWARDS, BODIN
DULUTH, MINNESOTA

RED LAKE BAND of CHIPPEWA INDIANS



RESOLUTION NO. 65-83

BE IT RESOLVED, that the Tribal Council for and on behalf of the Red Lake Band of Chippewa Indians, does hereby endorse and consent to the use and distribution of their judgment funds as set forth in S. 884, a bill to provide for the use and distribution of funds awarded the Red Lake Band of Chippewa Indians in Docket No. 15-72 of the United States Court of Claims.

BE IT FURTHER RESOLVED, that the Assistant Secretary - Indian Affairs, United States Department of Interior is hereby requested to also endorse and support the use and distribution of the Judgment funds as set forth in S. 884, and present his indorsement and support to the United States Senate, Select Committee on Indian Affairs at hearing scheduled to be held on April 28, 1983, at 2:30 p.m. in Senate Dirksen 538.

FOR: 9
AGAINST: 0

We do hereby certify that the foregoing resolution was duly presented and enacted upon at the Regular Meeting of the Tribal Council held on Tuesday, April 19, 1983, with a quorum present at the Tribal Office, Red Lake, Minnesota.

Roger A. Jourdain, Chairman

Royce Graves, Sr., Secretary

Exhibit A

RED LAKE ENTERPRISES
Red Lake Indian Sawmills (57 Years) Red Lake Cedar Fence Plant Chippewa Arts & Craft Shop
Red Lake Housing Industry Red Lake Fisheries Industry (52 Years) Home of the Famous Red Lake Walleyes

United States Court of Claims

RED LAKE BAND OF CHIPPEWA INDIANS

vs.

THE UNITED STATES

No. 15-72

At a Court of Claims held in the City of Washington, on the 6TH *day of* February *A. D. 19*81 *judgment was ordered to be entered as follows:*

IT IS ORDERED that plaintiff recover of and from the United States the sum as set forth in accordance with the certified copy of the judgment order attached with payment thereof to be accomplished as provided for in said order.

Rodney J. Edwards
Attorney of Record.
312 Alworth Building, Duluth, MN 55802

A true copy of record.

In testimony whereof *I have hereunto set my hand and affixed the seal of said Court at Washington, this* 6th *day of* February *A. D. 19*81

Clerk, Court of Claims.

Attest:

Chief Judge.

U. S. GOVERNMENT PRINTING OFFICE 16—52176-2
882-093

Exhibit B

IN THE UNITED STATES COURT OF CLAIMS

No. 15-72

RED LAKE BAND OF CHIPPEWA INDIANS

v.

THE UNITED STATES

FEB 6 - 1981

ORDER

The petition in this case, filed January 12, 1972, and an amended petition, filed June 10, 1975, assert a claim for $6 million in damages sustained to the timber on the Red Lake Indian Reservation, Minnesota, alleged to have been caused by military units of the United States in using the area as a practice and firing range. The government's answer to plaintiff's petitions denies any liability on the part of the United States.

Following extensive pretrial activity, trial sessions on the issue of liability were held at Duluth, Minnesota in November of 1979 and in Washington, D. C. in January of 1980.

On June 20, 1980, counsel for plaintiff moved to suspend proceedings pending completion of a proposed settlement which was, by letter dated June 23, 1980, transmitted to the Department of Justice. By an order entered June 23, 1980, proceedings were so suspended.

By letter dated September 5, 1980 from the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, to counsel for plaintiff, the proposed settlement offer was accepted, subject to 6 conditions as follows:

1. That the proposed settlement be approved by appropriate resolutions of the governing bodies of the plaintiff tribe.

2. That the approval of the settlement, as well as the resolution of the tribe, be secured from the Secretary of the Interior, or his authorized representative.

3. That a copy of each resolution and the approval of the terms of the settlement by the Department of the Interior be furnished to this Department.

4. That the judgment entered into pursuant to this settlement shall finally dispose of all rights, claims and demands which the plaintiff has asserted or could have asserted against defendant in Docket No. 15-72 and all claims, counterclaims and offsets which defendant has asserted or could have asserted against plaintiff with respect to the claims in Docket No. 15-72.

5. That the Court of Claims shall approve of this settlement and the stipulation before the judgment is entered.

6. That the final judgment to be entered herein shall be by way of compromise and settlement and shall not be construed as an admission by either party for the purposes of precedent or argument in any other case.

At a special meeting held at the Tribal Office, State Service Center, Bemidji, Minnesota, on September 30, 1980, the Tribal Council of the Red Lake Band of Chippewa Indians, the governing body of the Red Lake Band of Chippewa Indians, reviewed and discussed a report and recommendations of the Tribal Claims Attorneys which respect to the proposed settlement of this litigation. By Resolution No. 147-80 the council noted that it does hereby:

I. Approve, accept and confirm the terms of the proposed final settlement of the Red Lake Band claims against the United States in Court of Claims Docket 15-72, for the amount of $600,000 under the terms and conditions as set forth in offer of settlement letter transmitted by Rodney J. Edwards, Attorney for Red Lake Band Plaintiffs in Docket 15-72, dated June 23, 1980, to Anthony G. Liotta, Deputy Assistant Attorney General of the United States and as accepted by letter dated September 5, 1980, to Rodney J. Edwards from James W. Moorman, Assistant Attorney General; and

2. Give approval and consent to a stipulation for entry of final judgment embodying the terms of said settlement; and

3. Authorize and direct Claims Attorney Rodney J. Edwards, to enter into and to sign, on behalf of the Red Lake Band, a Stipulation for Entry of Judgment embodying the terms of said settlement, and to do and perform all other acts necessary or desirable in the consummation of said settlement; and

4. Request the Secretary of the Interior or his duly authorized representative and the Court of Claims to approve said Stipulation for Entry of Final Judgment embodying the terms of said settlement.

The Tribal Council further resolved "* * * that the approval of the settlement is hereby submitted to a referendum vote of the eligible voting members of the Red Lake Band to be held on November 12, 1980."

Notice of the election on the settlement was mailed to all eligible voters of the Red Lake Band (18 years and older) consisting of 3,939 members and the notice was posted at several locations on the Red Lake Indian Reservation, Minnesota. The special referendum election, held on November 12, 1980, resulted in a vote of 439 in favor of approving the proposed settlement and 68 opposed to the approval of the settlement.

By a letter dated January 19, 1981, the Acting Deputy Commissioner of Indian Affairs, Department of the Interior, reported:

* * * * *

Resolution No. 147-80, enacted by the Tribal Council of the Red Lake Band of Chippewa Indians on September 30, 1980, accepting the proposed settlement constitutes the action of the governing body of the tribe and is hereby approved.

The information furnished to us by you, our field officers and information obtained from other sources, has satisfied us that the proposed settlement of the claims in Docket No. 15-72 is fair and just. The proposed settlement is hereby approved.

COURT OF CLAIMS

On January 29, 1981, the parties filed a Stipulation For Entry Of Final Judgment with attached exhibits S-1 through S-13, which exhibits are, by this order, received in evidence as part of the record in this case. The stipulation states as follows:

a. The claims asserted in Docket No. 15-72 shall be compromised and settled pursuant to stipulation and by entry of final judgment by the Court of Claims against the United States in favor of the plaintiff, Red Lake Band of Chippewa Indians, in the amount of six hundred thousand dollars ($600,000), no review to be sought or appeal to be taken by any party.

b. The judgment entered into pursuant to this settlement shall finally dispose of all rights, claims and demands which the plaintiff has asserted or could have asserted against defendant in Docket No. 15-72 and all claims, counterclaims and offsets which defendant has asserted or could have asserted against plaintiff with respect to the claims in Docket No. 15-72.

c. The final judgment to be entered herein shall be by way of compromise and settlement and shall not be construed as an admission by either party for the purposes of precedent or argument in any other case.

On February 3, 1981, the trial judge of this court filed a memorandum report that recommended, in accordance with the stipulation of the parties, that judgment be entered for plaintiff. The recommendation of the trial judge is adopted.

IT IS THEREFORE ORDERED that judgment of six hundred thousand dollars ($600,000) is entered for plaintiff.

BY THE COURT

FEB 6 - 1981

Daniel M. Friedman
Chief Judge

A TRUE COPY:

TEST:

CLERK
OF CLAIMS

TRIBAL COUNCIL
Organized April 18, 1918
(Revised Constitution and By-Laws January 6, 1959)

RED LAKE BAND of CHIPPEWA INDIANS

OFFICERS
ROGER A. JOURDAIN, Chairman
ROBERT GRAVES, SR., Secretary
MILES S. LITTLECREEK, Acting Treasurer

DISTRICT REPRESENTATIVES
ANTHONY WILSON
JEROME JONES
ARVID BARRETT
VIRGINIA MAUN
WILLIAM P. DAILEY, JR.
LAWRENCE MOREAU
ALLEN ENGLISH, JR.

ADVISORY COUNCIL
7 HEREDITARY CHIEFS

LEGAL COUNCIL
EDWARDS, EDWARDS, BODIN
DULUTH, MINNESOTA

RESOLUTION NO. 32-81

BE IT RESOLVED, that the judgment of the United States Court of Claims in Docket No. 15-72 in the amount of $600,000.00 be programmed for use and distribution as follows:

Gross Judgment	$ 600,000.00
Claims Attorney Fees, per approved Contract No. K51C14200826 (20%)	120,000.00
Claims Attorneys Reimbursment of expenses advances.....	- 4,568.98
	$ 475,431.02
Congressional Requirement to Program 20% of recovery after payment of Attorney Fees and Expenses, plus proportionate interest.....	95,086.20
	$ 380,344.82
Per Capita Payment of balance for Red Lake Members plus proportionate interest.....	$ 380,344.83
Projected Programming of 20% plus proportionate interest	
Crime Victim Reparation	$ 40,086.20
Administration	10,000.00
Health & Sanitation	15,000.00
Incentive Awards, High School Grads..	10,000.00
Elderly Program	10,000.00
Juvenile Program.....	10,000.00
	$ 95,086.20

BE IT FURTHER RESOLVED, that the Bureau of Indian Affairs and Secretary of Interior proceed to process the use and distribution of the judgment funds as required by law and in accordance with this resolution.

Exhibit C

OFFICERS
ROGER A. JOURDAIN, Chairman
ROYCE GRAVES, SR., Secretary
MYLES LITTLECHIEF, Acting Treasurer

DIST. REPRESENTATIVES

ADVISORY COUNCIL
3 HEREDITARY CHIEFS

LEGAL COUNCIL
EDWARDS, EDWARDS, BODIN
DULUTH, MINNESOTA

RED LAKE BAND of CHIPPEWA INDIANS

Res. No. 32-81
Page two

RESOLVED FURTHER, that money paid to the members of the Red Lake Band of Chippewa Indians under this authority and Secretary of Interior or his authorized representative shall not be subject to any lien or claim of attorneys or creditors.

RESOLVED FURTHER, that any money paid to the members of the Red Lake Band of Chippewa Indians under this authority and Secretary of Interior or his authorized representative shall not be held to be other income and resources as that term is used in Sections 2 (a) (7), 402 (a) (8) of the Social Security Act, as amended (USC) 1946 Edition, Title 42, (a) (7) and 1202 (a) (8).

RESOLVED FURTHER, that the Bureau of Indian Affairs is requested to proceed immediately with applicable procedures (P.L. 93-134) and distribute the per-capita payment to the members of the Red Lake Band of Chippewa Indians as soon as possible.

FOR: 10
AGAINST: 0

We do hereby certify that the foregoing resolution was duly presented and enacted upon at the Special Meeting of the Tribal Council held on Friday, March 27, 1981, with a quorum present at the Tribal Office, Service Center, Bemidji, Minnesota.

Roger A. Jourdain, Chairman

Royce Graves, Sr., Secretary

TRIBAL COUNCIL
Organized April 18, 1918
(Revised Constitution and By-Laws, January 6, 1959)
RED LAKE BAND of CHIPPEWA INDIANS
Phone 218/679 3341
RED LAKE, MINNESOTA 56671

June 8, 1982

The Honorable David Durenburger
United States Senate
353 Rayburn Senate Office Building
Washington, D .C. 20510

Re: Bill to provide for the disposition of judgment funds of the Red Lake Band of Chippewa Indians recovered in Court of Claims Docket 15-22.

Dear Senator Durenburger:

As Chairman for the Red Lake Band of Chippewa Indians, I herewith submit a proposed bill, which the Red Lake Band requests you to introduce and support, for disposition of judgment funds recovered by the Red Lake Band in Court of Claims Docket 15-72.

On February 6, 1981, the Court of Claims entered its final judgment in the case awarding to the Red Lake Band of Chippewa Indians the sum of $600,000. The Red Lake Band of Chippewa Indians claims involved in Docket 15-72 were for damages to the Red Lake Indian Reservation's standing timber and tribal enterprises caused by the embedment of the projectiles from 50-caliber steel jacketed bullets that looged in standing timber on the Reservation in the area of an anti-aircraft firing range, which was in operation during the Korean War in 1950, 1951 and 1952, for the purpose of training National Guard units in anti-aircraft firing.

The Tribal Council of the Red Lake Band by Resolution No. 32-81 adopted March 27, 1981, (copy enclosed) submitted to the Secretary of Interior a plan for the use and distribution of the judgment funds, pursuant to P.L. 93-134, 25 U.S.C. 1401 et.seq.

The Secretary of Interior failed to submit the plan to Congress within the 180 days required by Public Law 93-134 and has, therefore, lost his authority under Public

Exhibit D

— RED LAKE ENTERPRISES —
Red Lake Indian Sawmills (70 Years) / Red Lake Cedar Fence Plant / Chippewa Arts & Craft Shop
Red Lake Housing Industry / Red Lake Fishing Industry (57 Years) . . . Home of the Famous Red Lake Walleyes

Law 93-134 to submit the plan for approval. Because of this failure, it is now necessary to secure legislation for the use and distribution of the judgment funds.

We anticipate that the Secretary of Interior will support this proposed legislation.

Very truly yours,

ROGER A. JOURDAIN, Chairman

RAJ:df
Enclosures

cc/w.encs: The Honorable Rudy Boschwitz
The Honorable Arlen Erdahl
The Honorable Tom Hagedorn
The Honorable Bill Frenzel
The Honorable Bruce F. Vento
The Honorable Martin Olav Sabo
The Honorable Vin Weber
The Honorable Arlan Strangeland
The Honorable James L. Oberstar
Kenneth L. Smith, Assistant Secretary for Indian Affairs
All members of the Red Lake Tribal Council
Edwards, Edwards & Bodin, Tribal Attorneys

P.S. This is a perfect example of my discussions with you on how the B.I.A. has been totally irresponsible with regard to its duties to the Red Lake Band.

OFFICERS
ROGER A. JOURDAIN, Chairman
ROYCE GRAVES, SR. Secretary
HOLLIS LITTLECREEK, Act'g Treasurer

DISTRICT REPRESENTATIVES
DAN RAINCLOUD, JR.
ANTHONY WILSON
GEORGE R. JONES
ADOLPH GARRETT
GERALD F. BRUN
RYMAN P. STATELY, JR.
LAWRENCE SEFEAU
ALLEN ENGLISH, JR.

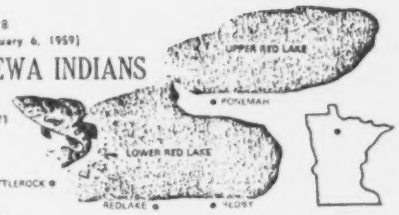
ADVISORY COUNCIL
7 HEREDITARY CHIEFS

LEGAL COUNSEL
EDWARDS, EDWARDS, BODIN
DULUTH, MINNESOTA

TRIBAL COUNCIL
Organized April 18, 1918
(Revised Constitution and By-Laws, January 6, 1959)

RED LAKE BAND of CHIPPEWA INDIANS

Phone 218/679-3341
RED LAKE, MINNESOTA 56671



RESOLUTION NO. 114-82

BE IT RESOLVED, that the attached proposed Bill "to provide for use and disposition of funds appropriated to pay a judgment in favor of the Red Lake Band of Chippewa Indians in Court of Claims Docket number 15-72" be submitted to the United States Congress;

BE IT FURTHER RESOLVED, that the Chairman of the Red Lake Band of Chippewa Indians is authorized and directed to request Senator David Durenburger to introduce the Bill, and request support from the rest of the Minnesota Congressional Delegation.

FOR: 8
AGAINST: 0

We do hereby certify that the foregoing resolution was duly presented and enacted upon at the Regular meeting of the Tribal Counci. held on Tuesday, June 8, 1982, with a quorum present at the Tribal Office, Red Lake, Minnesota.

Roger A. Jourdain, Chairman

Royce Graves, Sr., Secretary

– RED LAKE ENTERPRISES –
Red Lake Indian Sawmills (70 Years) / Red Lake Cedar Fence Plant / Chippewa Arts & Craft Shop
Red Lake Housing Industry / Red Lake Fishing Industry (57 Years) . . . Home of the Famous Red Lake Walleyes

A BILL

To provide for the use and disposition of funds appropriated to pay a judgment in favor of the Red Lake Band of Chippewa Indians in Court of Claims Docket numbered 15-72

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that twenty percent of the funds on deposit in the Treasury of the United States to the credit of the Red Lake Band of Chippewa Indians that were appropriated to pay a judgment by the Court of Claims in Docket No. 15-72, and the interest thereon, after payment of attorney fees and expenses, shall be set aside and programmed to serve common tribal needs and education requirements authorized by the tribal governing body and the remaining eighty percent of such funds shall be distributed per capita to all persons born on or prior to and living on the date of this Act, and who meet the requirements for membership in the Red Lake Band of Chippewa Indians.

Sums payable to members who are less than eighteen years of age shall be paid to their living parents or legal guardian for the benefit of such child and sums payable to members who are under any other legal disability shall be paid in accordance with such precedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons.

Any part of such funds distributed per capita to members of the tribe shall not be subject to Federal or State income taxes or subject to any lien or claim of creditors and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act.

97TH CONGRESS
2D SESSION

S. 2994

To provide for the use and distribution of funds awarded the Red Lake Band of Chippewa Indians in docket numbered 15–72 of the United States Court of Claims.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30 (legislative day, SEPTEMBER 8), 1982

Mr. DURENBERGER (for himself and Mr. BOSCHWITZ) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To provide for the use and distribution of funds awarded the Red Lake Band of Chippewa Indians in docket numbered 15–72 of the United States Court of Claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401, et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the funds appropriated with respect to the judgment awarded the Red Lake Band of Chippewa Indians in docket numbered 15–72 of the United States Court of Claims (less attorney fees and litigation expenses), including all interest and invest-

ment income accrued thereon, shall be distributed and used as follows:

(1) Eighty per centum of such funds shall be distributed by the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") in the form of per capita payments (in sums as equal as possible) to all enrolled members of the Red Lake Band of Chippewa Indians who are living on the date of enactment of this Act.

(2) Twenty per centum of such funds, including any interest or income accrued thereon, shall be—

(A) held in trust and invested by the Secretary for the benefit of the members of the Red Lake Band of Chippewa Indians, and

(B) distributed from such trust, subject to the approval of the Secretary, to the governing body of such tribe for the purpose of making expenditures to meet common tribal needs or educational requirements.

SEC. 3. (a) Any payment of a per capita share of funds to which a living, competent adult is entitled under this Act shall be paid directly to such adult.

(b) Any per capita share of funds to which a deceased individual is entitled under this Act shall be paid, and the

beneficiaries thereof determined, under regulations prescribed by the Secretary.

(c) Any per capita share of funds to which a legally incompetent individual or an individual under eighteen years of age is entitled under this Act shall be paid in accordance with such procedures (including the establishment of trusts) as the Secretary determines to be necessary to protect the interests of such individual.

SEC. 4. None of the funds distributed under this Act shall be—

(1) subject to Federal, State, or local income taxes, or

(2) considered income or resources in determining either eligibility for, or the amount of assistance under, Federal, State, or local programs.

Senator ANDREWS. We thank you all for coming down. Be assured we will move as rapidly as we can on this legislation.

Mr. JOURDAIN. As good neighbors, I hope we do.

Senator ANDREWS. Thank you very much.

We will next receive testimony from the tribal witnesses on S. 727.

Our first witnesses today will be Tillie Walker, vice chairwoman, Three Affiliated Tribes of Fort Berthold Reservation, New Town, N. Dak. She is accompanied by Pete Coffee, tribal member, and Charles A. Hobbs, tribal attorney.

Tillie, you never travel alone, do you? That is the way to go.

You may proceed.

STATEMENT OF TILLIE WALKER, VICE CHAIRWOMAN, THREE AFFILIATED TRIBES OF FORT BERTHOLD RESERVATION, NEW TOWN, N. DAK., ACCOMPANIED BY NAT MASON, SECRETARY; GERALD WHITE, MEMBER OF THE TRIBAL COUNCIL; PETE COFFEE, MEMBER OF THE TRIBAL COUNCIL; DONALD MULNARY, MEMBER OF THE TRIBAL COUNCIL; AND CHARLES A. HOBBS, TRIBAL ATTORNEY

Ms. WALKER. I would like to introduce to you, Mr. Chairman, the other members who are with me today. There is Nat Mason, secretary; Gerald White, member of the tribal council, Pete Coffee, member of the tribal council, Donald Mulnary, member of the tribal council, and Charles Hobbs, our tribal attorney.

My name is Tillie Walker. I am the vice chairperson of the Three Affiliated Tribes of the Fort Berthold Reservation, N. Dak. I am testifying on behalf of the chairperson, Alyce Spotted Bear, who could not be here today.

We support the bill, S. 727, which would correct an inadvertent error in our judgment plan for the judgment in Court of Claims docket 54–81L.

Mr. Chairman, I would like to submit our written testimony for the record and I will be prepared to answer any questions you may have.

Senator ANDREWS. Without objection, we will insert your written remarks in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF TILLIE WALKER, VICE CHAIRPERSON, THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

My name is Tillie Walker. I am the Vice Chairperson of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. I am testifying on behalf of the Chairperson, Alyce Spotted Bear, who could not be here today.

We support the bill, S. 727, which would correct an inadvertent error in our Judgment Plan for the judgment in Court of Claims Docket 54–81L. Our attorneys made a donation out of their fees of $113,777.10 to the Tribes for the purpose of a medical facility. However, we and the BIA inadvertently failed to segregate this donation, and it became part of the general judgment fund which, unless the bill passes, will be 80 percent distributable to the tribal members per capita. In other words, the donation would be 80 percent lost so far as the tribal government is concerned.

Attached are Tribal Resolution 82–14–S, and the original Judgment Plan which the bill will amend.

We appreciate the opportunity to testify in support of the bill.

Resolution No. 82-14-S

RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

WHEREAS, The Constitution and By-laws of the Three Affiliated Tribes authorize and empower the Tribal Business Council to engage in activities for the welfare and benefit of the Tribes and tribal members; and

WHEREAS, The Tribal Business Council of the Three Affiliated Tribes has previously approved a bill to set aside $113,770 for a hospital fund (the same being the amount of fees waived by the claims attorneys), and urged the Tribes' congressional delegation to support the bill and work toward its adoption into law; and

WHEREAS, In November, 1982, there was a tribal election and a new Chairperson and several new Councilmen were elected, and the new Tribal Business Council endorses in principle the hospital fund bill the same as did the previous Council, and specifically approves the bill drafted by the Interior Department, attached hereto,

NOW, THEREFORE, BE IT RESOLVED, That the new Tribal Business Council endorses the attached hospital fund bill and urges Senators Andrews and Burdick, and Representative Dorgan, to support the bill and work toward its adoption into law.

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 11 members of whom 7 constitute a quorum, 10 were present at a meeting, thereof duly called, noticed, convened and held on the 9 day of DECEMBER 1982; that the foregoing resolution was duly adopted at such meeting by the affirmative vote of 9 members, 1 members opposed, ___ members abstaining, ___ members not voting and that said resolution has not been rescinded or amended in any way.

Chairman (Voting) (Not Voting)

DATED THIS 9 DAY OF DECEMBER, 1982

Secretary, Tribal Business Council

ATTEST:

Chairperson, Tribal Business Council

97th CONGRESS
2d Session

S. ------

IN THE SENATE OF THE UNITED STATES

---

introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To authorize the Secretary of the Interior to set aside certain judgment funds of the Three Affiliated Tribes of Fort Berthold Reservation in North Dakota, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. (a) Notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401 et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the Secretary of the Interior (hereinafter in this Act referred to as the ''Secretary''), shall make a distribution of $4,000, plus all interest and investment income that has accrued thereon since August 5, 1982, to each of the successful appellants and eligible tribal enrollees who filed applications with the Three Affiliated Tribes of the Fort Berthold Reservation (hereinafter in this Act referred to as the "Tribes"), on or before July 9, 1982, to share in the distribution of the funds appropriated in satisfaction of the judgments awarded to the Tribes in docket Nos. 350-G and 54-81L before the United States Court of Claims; PROVIDED, that such eligible tribal enrollee did not share in the partial distribution of such funds made on August 5, 1982.

Section 2. (a) Subsequent to the distribution provided for in section 1 of this Act the Secretary shall deposit into a separate account --

For further information see Paulette Hansen 224-1194

(1) an amount not to exceed $113,777.10 of such funds, plus

(2) all interest and investment income accrued on the funds described in clause (1) from the date on which the transcript of such judgment was filed with the Comptroller General of the United States,

and any funds so deposited shall be distributed and used only as provided in this Act.

(b) Any funds deposited by the Secretary in a separate account under subsection (a) of this section shall be held and invested by the Secretary under the first section of the Act of June 24, 1938 (52 Stat. 1037).

Sec. 3. (a) Any funds deposited by the Secretary in a separate account under section 2(a), including any interest or investment income accrued thereon, may be distributed, with the approval of the Secretary, to the governing body of the Three Affiliated Tribes of Fort Berthold Reservation for use in the planning and development of a hospital to serve the needs of such tribes.

(b) Any funds deposited by the Secretary in a separate account under section 2(a), including any interest or investment income accrued thereon, which has not been distributed by the Secretary under subsection (a) of this section prior to the date which is 5 years after the date of enactment of this Act may be distributed to the governing body of the Three Affiliated Tribes of Fort Berthold Reservation for use in any tribal program which is authorized by such governing body and approved by the Secretary.

Sec. 4. Any funds remaining after the implementation of section 1 and the establishment of the special account provided for in section 2 of this Act shall be utilized pursuant to the 20 percent programing aspect of the plan for the use and distribution of the funds appropriated in satisfaction of the judgments awarded to the Tribes in docket Nos. 350-G and 54-81-L which became effective on May 26, 1982, as provided by section 5 of the Act of October 19, 1973 (Public Law 93-134, 87 Stat. 466).

PLAN

For the Use and Distribution of Three Affiliated Tribes of Fort Berthold Reservation Judgment Funds in Dockets 350-G and 54-81 L Before the United States Court of Claims

The funds appropriated on June 9, 1981, and on August 25, 1981, in satisfaction of the respective awards in Docket 350-G and in Docket 54-81 L granted to the Three Affiliated Tribes before the United States Court of Claims, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be utilized as herein provided.

Per Capita Payment Aspect

The Three Affiliated Tribes' latest approved membership roll shall be brought current to include all eligible members born on or prior to and living on the effective date of this plan. Subsequent to the preparation and approval of the membership roll, the Secretary of the Interior (hereinafter "Secretary") shall make a per capita distribution of eighty (80) percent of the funds, in a sum as equal as possible, to each tribal enrollee. Payment of the per capita is subject to the following conditions.

Those living enrollees who have delinquent tribal debts shall have their per capita shares placed in Individual Indian Money (IIM) accounts. Subject to the provisions of 25 CFR 104.9, the Agency Superintendent shall cause all or part of the delinquent tribal indebtedness of an enrollee to be paid to the tribe and any remainder of the per capita share in the IIM account shall be available to the enrollee subject to the provisions of 25 CFR, Part 104 governing IIM accounts. Living competent adult enrollees who have no delinquent tribal debts shall have their per capita shares paid directly to them. The ownership of the per capita shares of deceased individual enrollees shall be determined and the shares, subject to tribal claims, distributed in accordance with 43 CFR, Part 4, Subpart D. The per capita shares of legal incompetents who do not have delinquent tribal debts shall be handled pursuant to 25 CFR 104.5. The per capita shares of minors shall be handled pursuant to 25 CFR 60.10 (a) and (b)(1) and 104.4.

Programing Aspect

Twenty (20) percent of the funds, and any amounts remaining after the per capita payment provided above, shall be invested by the Secretary and seventy-five (75) percent of the interest and investment income accrued shall be utilized on an annual budgetary basis, subject to the approval of the Secretary, for the following purposes:

1. Land Acquisition and Consolidation

   Thirty (30) percent shall be utilized for land acquisition and consolidation, and may include the utilization of a portion of these funds as collateral to secure loans for land purchases.

2. Business Development

Twenty (20) percent shall be utilized, under a Plan of Operations developed by the tribal governing body and approved by the Secretary, for the establishment of tribal business ventures designed to provide employment for tribal members. Such ventures and projects may include, but are not limited to, Agri-Business Development, Irrigation Farming, Feedlots, Trailer Parks, Commercial Fisheries, Energy Development, Oil Refinery and Disposal Wells. A portion of these funds may be used as collateral for securing loans from private lending institutions for tribal members entering into business ventures, such loans to be fully secured. Under this program tribal members may enter into business partnerships with the Tribes.

3. Wake Fund

Ten (10) percent shall be utilized for assistance to tribal members for the maintenance of traditional wakes and funerals, with the limit allowable per tribal member to be established by the tribal governing body in consideration of funds available under the existing tribal wake fund.

4. Senior Citizens Assistance Program

Ten (10) percent shall be used for assistance to senior tribal members under a Plan of Operations developed by the tribal governing body and approved by the Secretary.

5. Higher Education

Ten (10) percent shall be used for the furtherance of higher education, under a Plan of Operations developed by the tribal governing body and approved by the Secretary, and shall include college scholarships and the enhancement of the tribal Community College Fund.

6. Communications Programs

Seven and one-half (7.5) percent shall be used for tribal communications programs which may include, but are not limited to, a tribal newspaper and radio communications system.

7. Alcoholism Treatment Programs

Seven and one-half (7.5) percent shall be utilized for programs designed to combat and treat alcoholism or any other form of chemical dependence.

8. Child Welfare Program

Five (5) percent shall be used in programs for the care of children with exceptional social, psychological, physiological or economic needs.

Should any funds in any of the above-cited program categories not be needed or be found in excess of programing goals in any given annual budget, such funds may be transferred by the tribal governing body, with the approval of the Secretary, to another of the above-cited program categories.

None of the funds distributed per capita or made available under this plan for programing shall be subject to Federal, State or local income taxes or be considered income or resources under the Social Security Act.

Senator ANDREWS. I appreciate your doing that, Ms. Walker. I do have a couple of questions.

The prepared statement of John Fritz, Deputy Assistant Secretary for Indian Affairs, makes recommendations for amendments to S. 727 to provide that funding for health programs should be contingent upon availability of funds after review of the remaining applications for participation in the per capita distribution. Have you and your attorney had an opportunity to review Mr. Fritz' statement?

Ms. WALKER. No; we have not. We have not seen it.

Senator ANDREWS. Then I cannot ask you if you have any objection to the proposed amendments.

Mr. Hobbs?

Mr. HOBBS. I just got a chance to look at this today. I had been told before what the substance of it was; that is, of them. Assuming that the text supports what we were told was their substance, there is going to be no objection to them.

Senator ANDREWS. Fine. We will leave the record open long enough so that when you have time, if you decide that there is some change, then we will be glad to hear from you.

[Subsequent to the hearing the following correspondence was received for the record:]

HOBBS, STRAUS, DEAN & WILDER,
Washington, D.C., May 29, 1983.

Hon. MARK ANDREWS,
U.S. Senate, Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR ANDREWS: At the hearing yesterday you were kind enough to leave the record open for the Tribes to respond to the Interior Department's proposed amendments. This is the Tribes' response.

The Three Affiliated Tribes concur with Interior's proposed technical amendments on p. 4 of Mr. Fritz's statement of April 28, 1983.

Interior's other proposed amendment, on p. 3 of its statement, proposes that the account shall be established after the per capita payments have been made ("Provided, That such account shall be established . . ." etc., etc.) This is to protect the per capita payments of pending applicants for membership, and the Tribes concur in principle with this.

However, there is no need to wait until the last membership application is disposed of and the last per capita payment has been made; the hospital fund can be set up as soon as funds are available from denied membership applications, without any risk to the payments that will be due to those whose membership applications are granted.

Therefore, instead of the language proposed by Interior, we request the following:

"Provided, that such deposit shall be made in two payments, the first consisting of $113,777.10 which shall be paid at such time as there are sufficient funds released from the new member per capita escrow account, because of new membership applications denied, to equal or exceed the said $113,777.10; the second consisting of an amount equal to the interest accumulated on the said $113,777.10 between August 25, 1981 and the date that the said $113,777.10 is deposited, and to be paid at such time as there are sufficient further funds released from the said escrow account, because of new membership applications denied, to equal or exceed the said interest; and provided further, that both payments shall be contingent upon the availability of funds from such escrow account."

We have discussed this with Mrs. West of the Interior Department and believe this language will be satisfactory to Interior.

Sincerely,

CHARLES A. HOBBS.

Senator ANDREWS. Tillie, the original resolution adopted by the tribal business council called for establishment of this special fund

for construction and maintenance of a hospital. S. 727, as we have introduced it, provides for use of these funds "for planning and development of a hospital or a health care facility."

Now, I gather there has been some change in thinking as to the ultimate goal of the tribe. Could you elaborate on that and tell us how you and the tribal members expect these funds to be used?

Ms. WALKER. We have discussed this and the feasibility of having a hospital or an extended health care facility. We have not made a final decision yet on this. We will be doing more planning and making a decision. We have to consider what is available in the area and what is feasible for the tribe. But, the funds will be set aside now and held until we make this decision. This is seed money to get started.

Senator ANDREWS. Good. Thank you very much. You have made a good record, and we will use that as we move this legislation forward. Tillie, we appreciate your coming with your tribal members and Mr. Hobbs.

Ms. WALKER. Charles Hobbs has a written statement and Pete Coffee has a statement.

Mr. HOBBS. Insofar as mine is concerned, Mr. Chairman, it is in writing and we will just submit it for the record, if that is alright with you.

Senator ANDREWS. Fine. It will appear in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF CHARLES A. HOBBS, ATTORNEY, HOBBS, STRAUS, DEAN, & WILDER

My name is Charles A. Hobbs. I am an attorney with the law firm of Hobbs, Straus, Dean & Wilder, which is counsel to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota (the Tribes).

The bill, S. 727, is intended to correct an inadvertent error in the Tribes' Judgment Plan relating to a recent large judgment in Court of Claims Docket 54–81L. We were the Tribes' attorneys in that case. We donated $113,777 to the Tribes out of our fee, but due to administrative oversight, this amount was not properly segregated as part of the Judgment Plan, and was lost into the general tribal fund which is subject to 80% distribution to tribal members. Unless the bill passes, the tribal government will lose 80% of the $113,377. The details are as follows.

We had a contract for a flat 10% fee in the Docket 54–81L case. After we won a judgment for the Tribes, we submitted a voucher to the Bureau of Indian Affairs for a 10% fee. Before it could be paid, the tribal chairman wrote a letter to the BIA asking that the attorney fee be reduced. The BIA held up paying the voucher until the attorneys and the Tribes could work things out.

We had a meeting with the tribal chairman, and negotiated an agreement that the tribal objection would be withdrawn if the attorneys would donate 5 percent of their fee ($113,777.10) for the purpose of a tribal hospital. The method of donation was agreed to be by the attorneys simply receiving a 9.5-percent fee instead of a 10-percent fee, and the 0.5 percent would be treated by the Tribes as a donation for the hospital. The donation could have been made by the attorneys receiving a 10-percent fee and donating back 0.5 percent, but that would have raised tax questions for them (because an Indian tribe was not then an organization to whom contributions could be deducted), and they preferred the first method.

The attorneys warned that since they were making the donation by not being paid as much as they were entitled to, this meant the donation would be mingled with the rest of the net judgment credited to the Tribes and would have to be separately identified in the proposed judgment plans to be voted on by the Tribes or else the donation might be lost through per capita payments. The attorneys drafted a resolution to take care of the matter, which the Council adopted. See attached Tribal Resolution 81–235 and minutes related thereto.

The Council forwarded Resolution 81–235 to the BIA, but did not flag its importance. The BIA drafted the alternatives to be voted on, but failed to mention the donation. The Council reviewed the BIA's draft, but failed to notice the omission. As a result, the judgment plan approved by the referendum did not mention the donation.

Consequently, under the approved plan, the donation will be lost and will become part of the general funds to be distributed 80-percent per capita and 20 percent to the Tribes, unless the Plan is amended. S. 727 would make the necessary amendment.

REGULAR MEETING, THREE AFFILIATED TRIBES TRIBAL BUSINESS COUNCIL, EXCERPTS FROM MEETING OF NOVEMBER 12, 1981

President: Austin Gillette, Chairman; August Little Soldier, Vice Chairman; Tillie Walker, Secretary; Gerald White, Treasurer, Roy Bird Bear; Nathan Paul Goodiron; Thomas Eagle, Willard Little Owl, Matthew Mason, Marie Wells, Willard Yellow Bird.

Others: Vance Gillette, Tribal Attorney; Charles Hobbs, Wilkinson, Cragun & Barker; Colleen Williamson, Dolores Sand, Fred Gunn, Wilbur Spotted Wolf, Tom Bluestone, Leroy Yellow Bird, Florence & Joe Deane, Louis Gwinn, Myra & Dennis Snow; Tom Shoppert, Darlene Meyers, Alvin Wells, Louis Felix, Dolores Wilkinson, Edmund White Bear, Don Yellow Bird, White Shield Alcoholism & Drug Prevention delegation; Clyde Brady, Sargeant at Arms; Rachel Grady, Recording Secretary; Richard Fields, John Danks, BIA.

Claims attorney fees: Secretary Walker read resolution authorizing payment of fee to the firm of Wilkinson, Cragun & Barker on Docket 54–81L, Interest on Case Judgment Award. Charles Hobbs was called on to speak. He stated that on September 17, 1978, a contract for attorney fees on the Interest Claim was approved for 10 percent by the Tribal Business Council. The Council met with him in Bismarck, North Dakota, at United Tribes. He reported to the Council that day that there was a possible claim on Interest. A contract was then drawn up for the firm to pursue the Interest Claim. Seven members of the Council were present, and the vote was seven (7) in favor approving the 10-percent flat fee to the attorneys. The Bureau of Indian Affairs approved the contract. The firm got legislation introduced allowing the Tribe to go to court on the Claim. The U.S. Government then filed that they did not object to the Interest Claims and as a result the Claims were forwarded by the Court. The firm then applied for the 10-percent fee from the Bureau of Indian Affairs. The Bureau of Indian Affairs was set to pay out the fee when they received a letter from Chairman Gillette stated that though the Tribe was pleased with their work, the Tribe would prefer a 5-percent fee to Wilkinson, Cragun and Barker. Charles Hobbs then called the Chairman, and they discussed the fee further. The contract was examined by the Chairman, and when he came to Washington, D.C. later, he discussed the lowering of the fee with Charles Hobbs. Since the case lasted only three years and other cases had lasted thirty years, he said that there was fairness to what the Chairman has proposed.

Wilkinson, Cragun, and Barker law firm agreed to the 9.5-percent fee and waived 0.5 percent to the Tribes. Councilwoman Wells moved for approval of the 9.5-percent fee with interest from August 25, 1981, date of Judgment payment, on Interest Case, Docket 54–81L. Second by Councilman Yellow Bird.

Charles Hobbs stated that there may be a problem with the .5% becoming a part of the 80–20 Judgment Plan. Councilwoman Wells said the .5% fee should be separate from the 80–20 Plan. Councilman Eagle suggested the Wilkinson, Cragun, and Barker law firm contribute to a fund which could then be tax deductible for the firm. Chairman Gillette stated that the .5% fee waived should be used for establishing a Hospital Trust Fund with funds left to draw interest. Charles Hobbs said that he wanted to arrange for the .5% to go to the Tribal Council for their decision on use.

Councilwoman Wells moved to amend her motion to read "Be it further resolved that the $113,777 with interest shall be used to set up Hospital Trust Fund and to hire a geologist.

There was discussion about the use of the fund for a geologist. Councilwoman Wells withdrew her motion to amend. Councilwoman Wells moved to approve 9.5% fee from the Interest Case judgment award to Wilkinson, Cragun & Barker,

with .5% of the 10% fees to the Three Affiliated Tribes to establish a Hospital Trust Fund.

There was further discussion and questions raised about the motion because it would cause confusion. The Bureau of Indian Affairs may assume that the .5% was to be programmed with the 80–20 Plan. It was suggested that a separate resolution be prepared with the .5% fee waived by the Wilkinson, Cragun, and Barker.

Councilwoman Wells withdrew motion on the attorney fees which included the .5% fee waived by the firm.

Councilman Goodiron stated that since the .5% of the attorney fees was negotiated, it is not a part of the 80–20 plan and the Tribe can use that money as they see fit. In this case, it would go toward the hospital fund. Councilman Mason stated he was pleased that the firm has reduced their fee and would support the hospital fund plan. Councilman White said he approved a separate resolution to avoid confusion.

The vote was taken on the motion by Councilwoman Wells approving 9.5% fee with interest from date of Interest Case, Docket 54–81L judgment award of August 25, 1981, to the Wilkinson, Cragun & Barker, and seconded by Councilman Yellow Bird.

Then (10) in favor, one (1) not voting; motion carried. Resolution 81–224. Chairman Gillette asked Charles Hobbs to draft another resolution on the .5% fee waived by the firm to be used for the Hospital Trust Fund.

Hospital trust fund: Secretary Walker read resolution drafted by Charles Hobbs on the .5% fee waived by Wilkinson, Cragun and Barker. The total dollars of the .5% waived is $113,777 with interest earned from August 25, 1981, the date of the judgment award.

Councilman Eagle moved for approval of the .5% fee waived by the Attorneys, $113,777 with interest earned from August 25, 1981, when Judgment on Interest was awarded, to be placed in a special fund for construction and maintenance of a hospital on the Fort Berthold Reservation or for use as matching fund for the hopsital. Second by Councilman Yellow Bird. Ten (10) in favor, one (1) not voting, motion carried. Resolution 81–235.

[Resolution No. 81–224]

RESOLUTION OF THE GOVERNING BODY OF THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

Whereas, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

Whereas, The Constitution and By-laws of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities for the welfare and benefit of the tribes and tribal members; and

Whereas, The law firm of Wilkinson, Cragun & Barker has successfully concluded the Fort Berthold Interest Case Court of Claims Docket No. 54–81 L, resulting in a judgment of $22,755,419.41 for the Tribes and the firm has asked for a ten percent (10%) fee which would come to $2,275,541.94 and the Tribes, while well pleased with the firm's work on this case, has asked the firm to consider a reduction to 9.5% which the firm has indicated it will probably favorably consider.

Now therefore be it resolved, That the Secretary of Interior is requested to immediately pay the law firm of a fee of 9.5% out of the Judgment, being the sum of $2,161,765.00 together with whatever interest such sum may have earned since the date of payment of the Judgment to the Tribal "August 25, 1981", on condition that the firm accept this as full payment of their fee.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 11 members of whom 7 constitute a quorum, 11 were present at a Regular Meeting, thereof duly called, noticed. convened. and held on the 12 day of November, 1981; that the foregoing resolu-

tion was duly adopted at such meeting by the affirmative vote of 10 members, 0 members opposed, 0 members abstained, 1 members not voting, and that said resolution has not been amended or rescinded in any way.

Chairman (*voting*) (not-voting).

Dates this 12 day of November, 1981.

TILLIE WALKER,
Secretary, Tribal Business Council.

Attest:

AUSTIN H. GILLETTE,
Chairman, Tribal Business Council.

[Resolution No. 81-235]

RESOLUTION OF THE GOVERNING BODY OF THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

Whereas, This Motion having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

Whereas, The Constitution and By-laws of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities for the welfare and benefit of the Tribes and Tribal members; and

Whereas, The law firm of Wilkinson, Cragun & Barker has successfully concluded the Fort Berthold Interest case, Court of Claims Docket No. 54-811, resulting in a judgment of $22,755,419.41 for the Tribes, and the firm is entitled to a 10% fee under its contract but has agreed to waive half of one percent or $113,777, on the understanding that the Tribes will place this amount in a special fund for the construction and maintenance of a hospital for the Reservation;

Now therefore be it resolved, that the amount waived by the Attorneys, $113,777, together with whatever interest such amount may have earned since August 25, 1981 (the date the judgment was paid to the Tribes), shall be placed in a special fund for the construction and maintenance of a hospital for the Reservation, or matching funds; and

Be it further resolved, that this provision for the Hospital Fund shall be made a part of any Judgment Plan presented to the Tribal members or to the Secretary of the Interior for approval.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 11 members of whom 7 constitutes a quorum, 11 were present at a Regular Meeting, thereof duly called, noticed, convened and held on the 12th day of November, 1981; that the foregoing resolution was duly adopted at such meeting by the affiliated vote of 10 members, 0 members opposed, 0 members abstained, 1 members not voting, and that said resolution has not been rescinded or amended in any way.

Chairman (Voting).

Dated this 12th day of November, 1981.

TILLIE WALKER,
Secretary, Tribal Business Council.

Attest:

AUSTIN H. GILLETTE,
Chairman, Tribal Business Council.

Senator ANDREWS. Mr. Coffee?

Mr. COFFEE. Mr. Chairman, it has already been stated by our vice chairperson. We are here for one purpose: to support Senate bill 727. We are trying to recover this sum of money that had been designated for health facilities.

On our reservation our health facilities are very inadequate. A lot of our people are suffering because of medical reasons.

Like Tillie said, we discussed this before. I want to get back into the beginning. We had a good hospital. It was closed for the simple reason

that the Garrison Dam created Lake Sakakawea and flooded our reservation. It had been rumored that it was closed because of the movement of our agents. But I will say this: that was not the reason that it was closed. It was eventually going to be closed because the dam was going to be built, so it was not only the hospital that was going to be closed, it was everything in our agency, one of the beautiful agencies of Indian reservations.

So, now we are trying to recover this, like Tillie said, to use these funds to the best way we know how, in providing medical care for our people.

We have other hospitals surrounding our reservation, but they are very, very reluctant to take in Indian people for the simple reason that a lot of Indians do not have health insurance.

So, this is a real good reason why we are here today as a delegation in support of Senate bill 727.

I thank you.

Senator ANDREWS. I appreciate your testimony. It will be of great help to us. You are nice to come down.

At this time I think we ought to hear from John Fritz, Deputy Assistant Secretary for Indian Affairs of the Bureau of Indian Affairs, on these two bills.

Incidentally, Tillie, if you and your people want to go up to the office, you are welcome. You know, when they built this Hart Building they forgot to hold down the echoes in that echo chamber. We have a couple of star quilts of your reservation hanging on the walls. It is amazing how much nicer it sounds in there, and particular how much nicer it looks.

Ms. WALKER. Thank you.

Senator ANDREWS. You can see how well the bells coordinate. We get done with the folks back home, and then they call for us to be over on the floor for a vote.

Mr. Fritz, if you can be precise and extend your remarks for the record and say all the things that we want to hear, then we can get through with you; if not, I will have counsel finish so that you do not have to wait an inordinate amount of time, if that is all right with you.

STATEMENT OF JOHN FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. FRITZ. Mr. Chairman, I believe that I can submit the written statements that we had prepared for the record, in light of the time constraints that we are operating under.

Senator ANDREWS. At this point then, we will insert into the record your statement regarding S. 727, S. 884, and S. 973.

[The statements follow:]

PREPARED STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

S. 727

Mr. Chairman and members of the committee, I am pleased to present the views of the Department of the Interior on S. 727, a bill which would authorize the Sec-

retary of the Interior to set aside certain judgment funds of the Three Affiliated Tribes of Fort Berthold Reservation.

We recommend the enactment of S. 727, if amended as we suggest.

S. 727 would authorize the Secretary to establish out of the Fort Berthold judgment funds a separate account of $113,777.10, plus all interest and investment income accrued thereon since the date of judgment, for use in the planning and development of a tribal hospital or health care facility. In addition, the bill would provide for final per capita distribution to those eligible applicants who did not participate in the two partial per capita distributions of the judgment funds. Finally, S. 727 would allow any remaining funds (after establishment of the special fund and final per capita distribution) to be used in accordance with the programming aspect of the secretarial plan which became effective May 26, 1982.

On May 29, 1981, the U.S. Court of Claims awarded $10,250,000 to the Three Affiliated Tribes in a compromise settlement of docket 350–G which had originally been filed with the Indian Claims Commission. The award resulted from claims for damages for wrongs committed by the United States during its administration of funds and other property of the tribes, including mismanagement of funds, coal lands and grazing lands prior to 1946. Funds to satisfy the award were appropriated on June 9, 1981.

On August 7, 1981, in docket 54–81L the Court of Claims also awarded to the Three Affiliated Tribes $22,690,625 plus interest at the rate of five percent on the principal sum of $3,610,681 from April 16, 1981, to date of payment. The award resulted from a claim for compensation under the fifth amendment for lands belonging to the tribes which were taken by the United States without tribal consent and without payment to the tribes of damages for delay in payment. Funds to satisfy the award were appropriated on August 25, 1981, bringing the interest figure to $64,794.41.

With respect to docket 54–81L, the attorney contract between the Three Affiliated Tribes and the law firm of Wilkinson, Cragun and Barker provided for a contingent fee of 10 percent of any recovery. Shortly after the $22,755,419.41 recovery in docket 54–81L, the law firm requested payment of $2,275,541.94. The tribal chairman, however, objected to payment of the full 10 percent fee and payment has stopped to permit resolution of the matter.

After discussions with the tribes, the law firm agreed to a payment of 9.5 percent of the award plus interest accrued thereon since August 25, 1981. In addition, the remaining .5 percent or $113,777.10 of the award would be set aside in a special fund for construction and maintenance of a tribal hospital. Payment in the amount of $2,263,000.15 (including $101,235.15 interest) was made to the law firm on December 15, 1981.

On March 9, 1982, the Secretary submitted the plan to Congress for the use and distribution of the judgment funds awarded in dockets 350–G and 54–81L. The plan, however, did not provide for the special hospital fund since no provision for such a fund was included in the tribal proposals submitted to the Bureau of Indian Affairs. The secretarial plan became effective on May 26, 1982. Hence, any amendment to the plan would require legislation.

While efforts to amend the plan were ongoing, two per capita payments were made to eligible tribal members. A $4,000 per capita payment was made on August 5, 1982, and a $45.16 payment was made on December 13, 1982.

While we have no objection to the establishment of a special hospital fund, we must assure that the per capita shares for those applicants whose eligibility has not been determined and who have not received the above payments are not jeopardized. We, therefore, recommend that the per capita payments in section 3 of the bill be distributed first. Further, we recommend that the special fund, plus any available interest, be contingent upon the availability of funds. We are uncertain at this time whether sufficient funds will be in the escrow account to set-aside for the special fund in the full amount specified in the bill after the enrollment procedure is completed with 149 enrollment cases pending, only some $68,700 is now available for the set aside.

Accordingly, we recommend that the following proviso be added at the end of section 2(a) of S. 727:

"Provided, that such account shall be established after the funds are distributed by the Secretary under section 3 of this act and shall be contingent upon the availability of funds."

We also recommend that section 2(a)(2) of the bill be amended to allow flexibility in the interest portion of the special fund in the event that the escrow

account does not have sufficient funds. Thus, the word "available" should be inserted after the word "all" in clause (2) of section 2(a).

Finally, we recommend the following technical amendment to section 3(b)(1) of the bill which would clarify that the per capita shares are to be distributed to tribal members, thus maintaining consistency with the secretarial plan. In order to make the distributions, a cut-off date of July 9, 1982, was established for individuals to file applications for membership. Applications were not filed "to share in the judgment fund." Thus, section 3(b) should be amended by deleting clause (1) and inserting in lieu thereof the following:

"(1) Who filed an application for membership with the Three Affiliated Tribes of the Fort Berthold Reservation on or before July 9, 1982."

With the inclusion on the foregoing amendments, we recommend enactment of S. 727.

This concludes my prepared statement. I will be happy to answer any questions the committee may have.

S. 884

Mr. Chairman and members of the committee, I am pleased to present the views of the Department of the Interior on S. 884, a bill "to provide for the use and distribution of the Red Lake Band of Chippewa judgment funds."

We recommend enactment of S. 884.

S. 884 would provide for the use and distribution of $600,000.00 awarded to the Red Lake Band of Chippewa Indians in the United States Court of Claims docket 15–72. The bill would authorize the Secretary of the Interior to distribute 80 percent of the judgment award per capita to all enrolled members of the Red Lake Band living on the date of enactment of the act. The balance of the award, including interest or income accrued thereon, would be utilized by the tribal governing body to meet common tribal needs or educational expenses.

The $600,000.00 award resulted from the band's claims for damages to its timber caused by the National Guard during the Korean War. Funds to satisfy the award were appropriated on February 18, 1981.

The Red Lake Band is organized under a constitution and bylaws adopted October 14, 1958, and approved by the Acting Secretary of the Interior on November 10, 1958, and amended in 1974 and 1979. The tribal governing body—the Red Lake Tribal Council—consists of 11 members, including a chairman, secretary, and treasurer who are elected at large, and eight councilmen elected, two each, from four districts.

The tribal council enacted on April 19, 1983, Resolution No. 65–83 approving the proposal for distributing 80 percent of the judgment funds per capita and programming the remaining 20 percent. The tribal proposal is incorporated in S. 884 and is wholly acceptable to this Department.

We note that the bill's eligibility requirements for the per capita distribution is consistent with the band's constitution, as amended, which requires applicants for membership to possess one-fourth degree or more Red Lake Chippewa Indian blood. As of June 1, 1982, there were 6,988 enrolled members of the Red Lake Band. The tribal roll is kept current; thus, we do not anticipate any delays in the per capita payment distribution.

This concludes my prepared statement and I shall be pleased to respond to any questions you may have.

S. 973

Mr. Chairman and Members of the Committee. I am pleased to appear before your Committee today to discuss S. 973, a bill "To make technical amendments to the Indian Self-Determination and Education Assistance Act and other Acts."

We support enactment of the subject bill which would provide technical and clarifying amendments to four Acts relating to Indian Affairs.

Section 1 of S. 973 amends the Indian Self-Determination and Education Assistance Act (P.L. 93–638; 88 Stat. 2203) by adding a new section 9 to that Act which would provide that it be exempt from the requirements of the Federal Grants and Cooperative Agreement Act of 1977 (P.L. 95–224; 92 Stat. 3).

Public Law 93–638, enacted in 1975, directs the Secretary of the Interior, upon request of any Indian tribe, to enter into a contract or contracts with any tribal

organization or any such Indian tribe to plan, conduct and administer reservation programs or services otherwise provided by the Bureau of Indian Affairs. Appropriate Federal regulations, implementing P.L. 93–638 have been in place since 1976.

On April 28, 1981, Department of the Interior Solicitor's Opinion concluded that P.L. 95–224 required that tribes or other Indian entities assuming management of programs of the Bureau of Indian Affairs be funded by grants rather than contracts. However, the General Counsel's Office at the Department of Health and Human Services has tentatively reached the opposite conclusion with respect to Indian Health Service programs.

The Bureau, in compliance with the Solicitor's Opinion and the Federal Grant and Cooperative Agreement Act (P.L. 95–224), prepared revised regulations which would provide for tribal operation of Bureau programs under grant agreements rather than contracts. The proposed revisions were developed over a period of more than one year. Tribal and Indian community leaders were consulted. The draft revisions were widely circulated for comments, including the September, 1982 publication in the Federal Register.

By the end of calendar year 1982, more than 120 sets of comments had been received on the September 1982 draft. It became evident that despite extensive discussion and consultation with the Indian community, the proposal to switch from contracts to grants did not have the support of the Indian community. The comments received expressed total opposition to the revised regulations, in that it was viewed as an attempt by the Bureau to abandon the existing contracting program which was clearly intended by Congress when they enacted P.L. 93–638. Further, the commentors disagreed with the Solicitor's Opinion that a shift from contracting to grants is mandated by P.L. 95–224, stating that P.L. 95–224 does not refer to Indian tribes.

It is our belief that if we were to effect these proposed changes, the result would be fewer programs being operated by the tribes. In view of the extensive tribal comments and criticisms of the proposed change, to move forward would seriously undermine our relationship with tribal governments.

Our understanding is the impetus for the Federal Grant and Cooperative Agreement Act was the desire by Congress to promote a discipline in implementing federally-assisted programs. That Act accomplishes that goal by establishing governmentwide criteria in selecting the legal instruments to finance a program or project, the means of characterizing federal-non-federal relationships, it promotes equity and fairness, and helps to reduce inconsistencies, confusion, and waste in our federal assistance programs. The Administration's view is this generally applicable national policy requirement should not be amended as it may lead to additional special purpose exemptions for particular programs that would undermine its effectiveness. We support the underlying purpose of the proposed section 1 of S. 973 to provide the Secretaries of the Interior and HHS the flexibility to use a contract to provide funds to tribal governments. However, we believe that an alternative means of accomplishing that purpose should be to provide broad discretion to the head of the affected Department or agency to select the appropriate instrument (grant, cooperative agreement, contract) which best accomplishes the purposes of P.L. 93–638, provided it is consistent with the program authorizing statute.

Attached is a suggested substitute provision to section 1 of the proposed legislation. We believe this alternative is responsive to the concerns of tribal governments who prefer the use of a contract vs. a grant instrument, the intent of proposed section 1 of S. 973, and the Indian Self-Determination Act, i.e., to provide a flexible set of standards which will enable the Federal Government to promote tribal self-government. This would also be consistent with the Administration's federalism principles to provide flexibility to State and local governments and other entities.

We would be pleased to work with the Subcommittee and staff to discuss this matter further, including legislative history to clearly establish the Congressional intent of the substitute language.

Section 2 of S. 973, further amends P.L. 97–344 (96 Stat. 1645), an Act which provided for the partitioning of certain restricted Indian land in the State of Kansas, to correct a second error in the land description contained in that Act. The Act was first amended in section 2 of P.L. 97–428 (96 Stat. 2268) which was enacted on January 8, 1983.

Section 3 of S. 973 corrects the land description in section 1 of P.L. 97–386 (96 Stat. 1946) which was enacted on December 23, 1982. That Act provided an addi-

tional 570 acres of trust lands to the Pascua Yaqui Reservation in Arizona, for tribal programs designed to improve the economy of the Tribe and its members through the development of housing, industry, and agriculture.

Section 4 of the subject bill amends the Indian Claims Limitations Act of 1982 (P.L. 97–394; 96 Stat. 1976) which was enacted to amend and extend 28 U.S.C. 2415, which expired December 31, 1982 by deleting the words "Indian Claims Act of 1982" and inserting in lieu thereof the words "Indian Claims Limitations Act of 1982", thereby correcting the reference to that Act, Section 2415 provides for the filing of claims by the United States on behalf of Indian.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

SUBSTITUTE LANGUAGE FOR SECTION 1 OF S. 973

"SEC. 9. Notwithstanding the provisions of this Act or the Federal Grant and Cooperative Agreement Act (P.L. 95–224), each Secretary responsible for carrying out the provisions of this Act is authorized, after consultation with a tribal government electing under this Act to conduct or administer a program or activity, to determine whether that activity shall be conducted pursuant to a grant, cooperative agreement, or contract."

Mr. FRITZ. With regard to the Senate bill 727, the Fort Berthold judgment funds, I would simply like to say that the department would recommend enactment of S. 727 if amended as we suggest. The amendments really are essentially for the protection of the opportunity of those who should derive per capita shares. Essentially what we advocate is that we have no objection whatsoever to the establishment of a separate account, but we must assure that the per capita shares for those applicants whose eligibility has not been determined and who have not received the per capita payment in section 3 of the bill be distributed first.

Further, we recommend that the account plus any available interest be contingent on the availability of funds. As I understand it, with 149 enrollment cases currently pending, $68,700 is now available for the set-aside.

We also recommend that section 2(a)(2) of the bill be amended to allow flexibility in the interest portion of the activity account in the event that the escrow account does not have sufficient funds.

Finally, we would recommend a technical amendment to section 3(b)(1) of the bill which would clarify that the per capita shares are to be distributed to tribal members, thus maintaining consistency with the secretarial plan.

Senator ANDREWS. Any time we can get you to say that you agree with a bill that we need out in North Dakota, then that is when we want the Department of the Interior to stop right there. You have done well.

Your overall testimony indicates the impetus for the Federal Grant and Cooperative Agreement Act was the desire by the Congress to promote discipline in implementing federally assisted programs. It is my understanding that the programs the tribes or other Indian entities contract with the Bureau of Indian Affairs under Public Law 93–638 are in fact Federal programs and would be performed by the bureau if they were not contracted for by the tribes.

Do you agree with this evaluation?

Mr. FRITZ. This is with respect to S. 973?

Senator ANDREWS. That is right. We are trying to get them all through.

I am not going to go back to S. 727. When you say that you agree with that then that is it. I have been in this business long enough not to muddy up that water.

Mr. FRITZ. We do support the enactment of that bill, and with respect to your question, yes, I view that the arrangements are contractual in nature.

Senator ANDREWS. You refer in your testimony to an April 28, 1981, Solicitor's opinion. Could you provide a copy of that opinion for the record?

Mr. FRITZ. Yes, sir, as a matter of fact, I believe I have it with me.

Senator ANDREWS. That will become a part of the record.

[The document follows:]

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

APR 28 1981

Memorandum

To: Acting Deputy Assistant Secretary
Indian Affairs

From: Deputy Solicitor

Subject: Indian Self-Determination and Educational Assistance Act - Revision of Regulations

You have asked for our opinion whether the Bureau of Indian Affairs may revise its regulations under the Indian Self-Determination and Educational Assistance Act, Pub. L. 93-638, January 4, 1975. In revising the regulations, the BIA would like to change its current procedures for assisting tribal governments to operate programs formerly conducted by the BIA from a contracting program to a federal assistance program. For the reasons discussed below, we believe that the contracting program must be changed to a federal assistance program.

As background, Title I of the Indian Self-Determination and Assistance Act allows, indeed encourages, Indian tribes to operate programs serving them under contract with the BIA. As a result, Indian communities now share with the Government the responsibility to implement a policy of Indian self-determination.

This is reflected in Section 102(a) of the Act which directs the Secretary of the Interior to enter into contracts, upon the request of Indian tribes, with tribal organizations to perform the programs and services carried out by the BIA on Indian reservations under its various authorities. Section 106(a) provides that contracts under Title I will be in accordance with Federal laws except that such contracts may, in the discretion of the Secretary, be negotiated and certain bonding requirements may be waived. In addition, this section gives the Secretary authority to waive contracting laws and regulations where inappropriate or inconsistent with the Act.

In general, Government contracting is governed by the Federal Property and Administrative Services Act of 1949, 41 U.S.C. 251, and the Federal Procurement Regulations, 41 C.F.R. 1-1.000 et seq. However, in most material respects, the Secretary has waived these contracting laws and regulations (see 41 C.F.R. 14H-70 et seq.), since they pertain to the acquisition of goods and services, and thus are either inappropriate for or conflict with the self-determination program and even the contractual-type arrangements contemplated under Pub. L. 93-638.

Subsequent to the passage of the Indian Self-Determination and Assistance Act, Congress enacted the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224, February 3, 1978. This Act resulted from a recognition in Congress that a uniform statutory guideline was needed to express the sense of Congress on when executive agencies should use either grants, cooperative agreements or procurement contracts. Thus, this Act was intended to clarify some of the confusion, and reorder inconsistent practices that had resulted from a lack of central guidance in this area. Sen. Rept. No. 95-449, 95th Cong., 1st Sess., September 22, 1977.

In this connection, the Grant and Cooperative Agreement Act distinguishes among contracts, grants and cooperative agreements, and requires agencies to adhere to those distinctions when making awards. Sections 4, 5 and 6 of the Act set forth the criteria that require the use of either a type of procurement contract, grant or cooperative agreement as the legal instrument between the Federal Government and award recipients. The clear intent of these sections is to require that the legal instrument used reflects the basic character of the relationship established. See Burgos & Associates, Inc., B-194140, 79-2 CPD 194.

In this regard, the Act identifies the three basic relationships as follows. A procurement contract is to be used whenever the principal purpose of the relationship between the agency and its awardee is the acquisition by purchase, lease or barter of property or services for the direct benefit or use of the Government. On the other hand, when the relationship established is for the transfer of money, property or services or anything of value to the recipient to accomplish a public purpose of support or stimulation, and the Federal role is passive or no substantial agency involvement is anticipated, the agency must use a grant agreement; if the Federal role is active or substantial agency involvement is anticipated the agency must enter into a cooperative agreement. The latter two relationships are characterized as federal assistance.

Further, Section 7(a) declares that notwithstanding any other provision of law, each agency must use either a contract, grant or cooperative agreement in accordance with the provisions of the Grant and Cooperative Agreement Act. However, the legislative history of this Act states if an agency is specifically proscribed by law from using a type of instrument, this proscription is not affected by section 7(a). Sen. Rept. No. 95-449, 95th Cong. 1st Sess., September 22, 1977.

In view of the nature of the relationships contemplated under Pub. L. 93-638, it is clear that a procurement contract is not the proper instrument for implementing Title I. At the same time, an examination of the legislative history of Pub. L. 93-638

also indicates that at the time of the enactment of this legislation, Congress preferred the BIA award contracts, rather than grants, for this purpose. Hearings on S.1017 Before the Subcomm. of the Comm. on Interior Affairs, 93rd Cong. 2d Sess. (1974).

Thus, the question raised concerns the relationship between the preference for contracts under Pub. L. 93-638 and the requirements for grants or cooperative agreements under Pub. L. 95-224.

We have carefully considered the legislative history of the Grants and Cooperative Agreement Act, indicating that the requirements thereunder should not prevail over arrangements proscribed by other provisions of law. However, Pub. L. 93-638 does not proscribe using grants under Title I, while Pub. L. 95-224 does require using grants or cooperative agreements in these circumstances. Accordingly, we are compelled to conclude that the requirement for grants or cooperative agreements under Pub. L. 95-224 must prevail as the later expression of Congress. See Maybank Amendment, 57 Comp. Gen. 34 (1977).

In reaching this conclusion, we have also considered the Comptroller General's decision that there is a clear distinction between the imposition of statutory restrictions or proscriptions which are intended to be binding and the Congressional technique of establishing a preference in a non-statutory context, such as legislative history. The absence of an express statutory restriction for grants or cooperative agreements in Title I coupled with the definitive requirements for them under Pub. L. 95-224 clearly indicate that grants or cooperative agreements must now be used under Title I. LTV Aerospace Corporation, 55 Comp. Gen. 309 (1975).

Finally, Pub. L. 95-224, as noted above, distinguishes between grants and cooperative agreements depending upon the amount of Federal involvement. The BIA should consider the degree of Federal involvement anticipated or needed and use the appropriate instrument, with the regulations to be revised accordingly.

M. R. Tidwell
Solicitor

Senator ANDREWS. You indicate that 120 sets of comments on your proposed regulations were received. What percentage of these objected to adoption of the grant mechanism and what reasons were given?

Mr. FRITZ. Well, there were a number of reasons given. Essentially, the one that was most prevalent was the feeling that the grant or cooperative agreement methodology of viewing moneys which are extended to tribes for governmental services was moving back from the unique method set up by the Self-Determination Act and that is the contractural method. As a result, approximately 85 percent of the statements were negative, Mr. Chairman.

Senator ANDREWS. Your statement indicates that a change to the grant mechanism would seriously undermine our relationship with tribal governments. Can you explain this further?

Mr. FRITZ. I think this relates to the negative comments received from the tribal governments, and that is that tribal governments and tribal leaders across this Nation perceive that the contractural method established and envisioned by Public Law 93–638 was uniquely geared toward Indian organizations and tribal governments. As a result, they felt—as I read their comments, at any rate—that this relationship between the Bureau of Indian Affairs and the tribal governments would be jeopardized because grants and cooperative agreements do not have the same standing, in their eyes—it is a self perception on their part—of what the contractural arrangement does have.

Senator ANDREWS. Finally, the substitute amendment you propose does not require tribal consent to adoption of the grant mechanism.

In your opinion, how important is consent of the tribe to the implementation of the President's program of encouraging tribes to assume operations of Federal programs?

Mr. FRITZ. Well, consent is obviously very critical because if you are going to have governments dealing on a government-to-government relationship, we really do not have a completed arrangement or transaction unless you have the consent of both parties, so I think it would be essential.

Senator ANDREWS. That is fine, Mr. Fritz.

We thank you.

We now would like to get a few questions to Dr. Rhoades, and then I think we will essentially have the hearing wrapped up.

Senator ANDREWS. Dr. Rhoades, welcome.

STATEMENT OF DR. EVERETT RHOADES, DIRECTOR, INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Dr. RHOADES. Thank you, Mr. Chairman.

Senator ANDREWS. Dr. Rhoades, I would like to ask you one of the same questions I just asked Mr. Fritz.

How important is consent of the tribe to implementation of the President's program of encouraging tribes to assume operations of the Federal programs?

Dr. RHOADES. Senator, I agree entirely with my colleague, Mr. Fritz, that consent and consultation with the tribes related to the content of an agreement is critical.

We feel that the decision as to whether the instrument that ought to be used, that is, let us say a contract or a grant, very rightfully should reside in the Secretary's office after consultation with the tribes.

We would not want to spend an inordinate amount of time in continued discussion and perhaps disagreement as to which instrument would be the appropriate one and can foresee that indeed that might become a point of contention between tribes and the Department. For example, it really indeed might hold up the process of fulfilling Public Law 93–638.

Senator ANDREWS. You indicate that the general counsel of HHS is tentatively advised that Public Law 95–224, the Federal Grant and Cooperative Agreement Act, permits the use of contracts with Indian tribes.

Was this decision premised on the theory that delivery of health to Indians is a Federal program, as opposed to a tribal program receiving Federal assistance?

Dr. RHOADES. Yes.

Senator ANDREWS. Finally, you state that your department would prefer, as a matter of policy, to continue to use contracts rather than grants. Could you explain why contracts are preferred?

Dr. RHOADES. Yes. Again, precisely for the same reason that Mr. Fritz spoke about in that it is the perception of the tribes that it is more properly a fulfillment of a government-to-government relationship, if you will, to deal with them as a contractor rather than as a grantee.

Senator ANDREWS. Thank you very much.

We will insert into the record at this point the prepared remarks of Dr. Rhoades.

[The statement follows:]

PREPARED STATEMENT OF DR. EVERETT R. RHOADES, DIRECTOR, INDIAN HEALTH SERVICE, HEALTH RESOURCES AND SERVICES ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

I am pleased to appear before you today to discuss S. 973, which would amend P.L. 93–638, the Indian Self-Determination and Education Assistance Act (ISDA), to remove it from the scope of the Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95–224). I am accompanied this afternoon by Mr. Joseph Moran, Director of the Division of Grants and Procurement Management, Health Resources and Services Administration, and Mr. Richard McCloskey, Director of the IHS Office of Legislation and Regulations.

The purpose of S. 973 is to resolve the question whether agreements with Indian tribes or tribal organizations which elect to assume management of programs under the Indian Self-Determination Act may be in the form of either contracts or grants, or whether they must be in the form of grants. With respect to this question, the legal counsel of two executive agencies with responsibilities under the ISDA have tentatively made different interpretations of the requirements of P.L. 95–224 as applied to it.

The Office of the Solicitor of the Department of the Interior concluded that P.L. 95–224 permits only the use of grant agreements with Indian tribes electing to manage Bureau of Indian Affairs programs under section 102 of the ISDA; however, we understand that the Solicitor has been asked by the Assistant Secretary on Indian Affairs to re-examine his position on the matter. At the same time, the Office of the General Counsel of the Department of Health and Human Services has tentatively advised that P.L. 95–224 permits the use of contracts with Indian tribes electing to manage Indian Health Service (IHS) programs under section 103 of the ISDA. At this time, neither agency's legal counsel has issued a final legal opinion on the question; both agencies have the issue under further study.

Implementation of the IHS programs under the ISDA was already under way, using contracts as the form of agreement with Indian tribes and tribal organizations, before enactment of P.L. 95–224. Based on the tentative advice from the General Counsel's Office, IHS has continued to use contracts for this purpose. The Department would prefer, as a matter of policy, to continue to use contracts rather than grants, and we understand that the Interior Department does not object to this view.

Since 1975 the IHS has been implementing a form of contract tailored to suit this program, which incorporates a number of variations upon and waivers of usual contract requirements applicable to Federal contracts. Both the Department and the participating Indian tribes are well satisfied with the result.

In addition, we understand that some Indian tribes and tribal organizations participating in programs under section 102 have objected strongly to substitution of grants for contracts. In part, the tribes prefer contracts over grants because they view contracts as a more appropriate embodiment of the special relationship between the Federal government and Indian tribes. Further, they are concerned that grant agreements may be less favorable to them. We sympathize with this concern.

While it is possible that HHS and the Interior Department will each be advised by legal counsel that P.L. 95–224 permits the continued use of contracts under the ISDA, we cannot at this time be sure how that legal question will be finally resolved. The amendment proposed by S. 973 would eliminate this legal issue, by making the provisions of P.L. 95–224 inapplicable to the ISDA. There would then be no doubt, under the terms of the ISDA itself, that agreements with the IHS under section 103 could be in the form of contracts. However, this solution to our immediate problem would also have other undesirable effects.

Our General Council's Office, although unable in the short time available to them to give us a final opinion on the question, has tentatively advised us that making P.L. 95–224 altogether inapplicable to the ISDA might eliminate present flexibility to use the form of agreement most appropriate in each particular situation. We would therefore prefer that language be substituted for the language presently in section 1 of S. 973 to assure us that flexibility. The language that we would recommend to amend the ISDA would read as follows:

"Notwithstanding the provisions of this Act or the Federal Grant and Cooperative Agreement Act, P.L. 95–224, each Secretary responsible for carrying out the provisions of this Act is authorized, after consultation with a tribal government elected under this Act to conduct or administer a program or activity, to determine whether that program or activity shall be conducted pursuant to a grant, cooperative agreement, or contract."

We would support enactment of this provision, or would be pleased to work with the staff of the Committee as needed to draft mutually acceptable language.

Mr. Chairman, this completes my prepared statement. I will be pleased to try to answer any questions you or other members of the Committee may have.

Senator ANDREWS. We have one other witness, Mr. Ron Andrade, executive director, National Congress of American Indians.

Welcome, Mr. Andrade.

STATEMENT OF RON ANDRADE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. ANDRADE. Thank you, Mr. Chairman.

Senator ANDREWS. I must go vote, Mr. Andrade. I apologize. I will have our counsel pose the questions of the committee in order not to take up an inordinate amount of your time.

We will insert into the record at this point your written remarks.

[The statement follows:]

PREPARED STATEMENT OF RON ANDRADE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. Chairman, I want to thank you for the opportunity to present testimony in support of an amendment which is intended to relieve Indians of P.L. 95–224, the Federal Grant and Cooperative Agreement Act of 1977.

I would like to say at the outset that the National Congress of American Indians has always been opposed to 95–224 being imposed upon the Tribes. Our opposition stems from our belief that Congress never specifically intended that the law apply.

If the Bureau of Indian Affairs had simply read the law in the Tribes' best interest, we might not have to be here. The requirement to use contracts, grants, and cooperative agreements established in public law 95–224 was not intended to supersede 93–638.

A review of 95–224, section 4 and section 5 leaves too much confusion and discretion in interpretation.

Section 4.2 provides for contracts whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate.

This is precisely what 93–638 was intended to do.

Section 5.2 provides for grants if no substantial involvement is anticipated between the executive agency and the agency receiving the grant.

NCAI does not believe that you can find a Tribe that will testify that there is no substantial involvement of the BIA in 638 contracts.

Since the Congress specifically provided that their preference that contracts be used in transferring of programs to Tribes, we feel that 93–638 should prevail.

NCAI supports the amendment exempting Tribes from 95–224 as means of clarifying the rights of Tribes. The use of contracts is designed to provide a mechanism for the Tribes to perform certain services which the Government otherwise would have to perform. In other words, these services are something the Tribes agrees to do, not what the BIA agrees to grant them to do.

The intent of 93–638 was to provide a mechanism whereby the Tribe could contract for programs performed by the BIA. This would presumably reduce costs and BIA personnel.

The change to grants would alter the intention of 93–638 and would in our opinion, reduce the Tribes' ability to reduce the presence of BIA personnel.

A major concern expressed by NCAI last year was the provision of 95–224 calling for competitive grant awards, section 2 b.3. This section alone, we feel, would jeopardize 93–638 contracts. P.L. 93–638 provides for contracts with Tribes to perform services. There never was an intention by Congress to make these contract awards competitive.

In reviewing section 2 b.3, we feel that P.L. 95–224 is totally incompatible with 93–638 and that 93–638 should be the prevailing law.

I would like to draw the Committees attention to another problem. This problem I can only describe as the BIA's knee jerk reaction. I can say that when this amendment passes, the BIA will stop all grants citing as its reason, the Senate's amendment. This concern comes from direct negotiations between NCAI and the BIA. In 1981, the BIA decided to contract with NCAI. The BIA grants management office told us it was impossible because 95–224 required grants. NCAI was instructed to apply for a grant. In early 1982, NCAI applied for a contract to provide some specific services, we were denied because grants were required. In 1983, we requested a grant and were told it had to have a solicitors opinion to see if we qualified for a grant.

If our problems can provide any indication, the BIA will play havoc with all present grants.

We would request that this Committee instruct the BIA that the amendment does not preclude the use of grants and that any effort on their part to create confusion will be subject to committee review.

Lastly, we would like to submit for the record, a sample of the many letters NCAI has received from tribes on the subject of P.L. 93–638 vs. P.L. 95–244. The letter was written by Tim Love, Governor of the Penobscot Tribe in Maine, and was sent to Ken Smith, Assistant Secretary for Indian Affairs.

Mr. Chairman, we appreciate your interest in this issue.

NOVEMBER 10, 1982.

Re 638 Regulation Revisions.

Hon. KENNETH SMITH,
Assistant Secretary—Indian Affairs,
U.S. Department of the Interior,
Washington, D.C.

DEAR MR. SMITH: The purpose of this letter is to comment on behalf of the Penobscot Indian Nation regarding the proposed changes in P.L. 93–638 regula-

tions published in Vol. 47 of the Federal Register on September 13, 1982. The Penobscot Indian Nation is fundamentally opposed to this proposal to change "638" contracts to grants for the following reasons:

This change would undermine and is repugnant to the policy of Indian self-determination and government to government relationship recognized in P.L. 93–638 which was explicitly affirmed in P.L. 96–420, the Maine Indian Land Claims Settlement Act.

The Federal Grant and Cooperative Act does not, as a matter of law, either supersede the right to contract provided for Indian tribes in Section 102 of the Indian Self-Determination Act or require that grants be the exclusive means by which Indian tribal governments and organizations may administer programs in lieu of the federal government.

Notwithstanding the need for improvements, the wholesale changes called for in the proposed rule would unnecessarily complicate practices and procedures developed under 638 which tribal and BIA officials have only acquired a working knowledge of after years of effort.

OPPOSITION TO THE PROPOSAL AS A MATTER OF POLICY

The Penobscot Indian Nation interprets the existing 638 contracting relationship as a key element of the Nation's government to government relationship with the United States, a relationship which is itself based on the U.S. Constitution and federal Indian law principles derived therefrom. We view 638 contracts as legally binding instruments whereby the Nation imposes an obligation upon itself to perform certain services and programs on behalf of the federal government. In other words, the services and programs are a responsibility owed to the Nation, pursuant to various authorizing laws as well as the general principle of trust responsibility. In P.L. 93–638 Congress acted to further Indian self-determination primarily by establishing a right to contract for the delivery of such federal responsibilities which Indian tribes and nations may exercise at their option. The Maine Indian Land Claims Settlement Act, in Section 5(h), specifically included this right to contract and we, as a matter of policy, have exercised this right to the fullest extent possible. Yet, exercising the right to contract for the delivery of such services and programs does not change the fact that the underlying responsibility remains with the United States government.

The proposed rule states: "This is a technical change in form; substantive rights and obligations under P.L. 93–638 are not being altered by ths law." However, we believe that a contract-to-grant change necessarily carries with it an implication that a tribe is to be regarded as a recipient of assistance as opposed to being the governmental unit which delivers federally-owed services and programs to its constituents. This point is at the core of our opposition to the proposed change for reasons of policy. The right to contract provided in 638 is an essential aspect of the policy of self-determination and for these purposes, a grant or a "right to a grant" is basically different proposition. Awarding an assistance grant to a tribe or nation is not the same type of transaction as negotiating a contract whereby the tribe or nation agrees to step in as one government to another and assume a responsibility to deliver human and natural resource services owed by the United States. Clearly, policy issues are at stake and not simply questions of nomenclature or terminology.

THE FEDERAL GRANT AND COOPERATIVE AGREEMENTS ACT SHOULD NOT BE INTERPRETED AS REQUIRING THIS CHANGE

The Interior Department Associate Solicitor for General Law has interpreted P.L. 95–224 as requiring that 638 contracts be changed to assistance grants. We are not persuaded by the Associate Solicitor's analysis and are convinced that he has misinterpreted both the nature of 638 contracts and the requirements of P.L. 95–224. As our above discussion makes clear, what is actually involved in a 638 contract is the voluntary assumption by an Indian tribe or nation of the federal governments responsibilities. The Indian tribe or nation is thus performing a service for the United States and the United States is acquiring a benefit or service in turn. The agreement between the two governments appropriately takes the form of a contract.

The Associate Solicitor appears to be confused by reliance on the idea of procurement contracts and the body of law relating to Defense Department appropriations. In Section 102 of 93–638 the Congress specified that a contract was to be the legal instrument for implementing the law and in Section 106(a) author-

ized the Secretary to waive any federal contracting laws or regulations which he determined were not appropriate for the purposes of the contracts involved or inconsistent with the provisions of the Self-Determination Act. The intent of the law was to authorize the development of a type of contract which would be different from other types of federal procurement contracts. However, whatever differences may exist between 638 contracts, and standard federal procurement contracts, (if there is such a thing) are differences of form not substance. The type of transaction which takes place in negotiation of a 638 contract is consistent with the basic legal definition of a contract and with the description of a contract found in section 4(1) of the Federal Grant and Cooperative Agreements Act.

Instead of relying on Comptroller General opinions relating to DOD appropriation act issues, the Solicitor's office should have looked to the substantial body of federal Indian law for guidance on the question of whether P.L. 95–224 should supersede P.L. 93–638 on the contract-grant issue. Since it is our analysis that the proposed contract to grant change involves fundamental issues of policy and that the right to contract in P.L. 93–638 is an essential aspect of the law, we have concluded that changing to a system of grants undermines or diminishes this basic right. It is our understanding that in such instances Congress must expressly intend to change or impact Indian rights and there is no evidence of such Congressional intent in P.L. 95–224. Instead, Congress simply intended to institute guidelines to bring about uniformity among federal agencies in the use of contracts, grants and cooperative agreements.

We believe that a recent report by the Comptroller General on the Cooperative Agreement Act is supportive of the conclusion that 638 contracts should continue to be used. In his report entitled, "Agencies Need Better Guidance for Choosing Among Contracts, Grants and Cooperative Agreements" issued on September 4, 1981, the Comptroller General points out that agencies have greatly confused the definitions of contracts, grants, and cooperative agreements. As we read the Comptroller General's analysis, the choice of instrument depends on the federal purpose involved in the legislation authorizing the programs or services at issue. The discussion beginning on page 9 of the report is particularly applicable and concludes that what is important is an understanding of the substance of the transaction, not the form. Since the purpose of P.L. 93–638 was to establish a system whereby tribal governments perform services on behalf of the federal government, it is clear that contracting is the correct method under the Comptroller General's interpretation of P.L. 95–224.

Finally, we would note that the Solicitor appears to be confused about who is receiving assistance under 638 contracts. The various programs and services contracted under 638 have been authorized by Congress to benefit individual Indians or to meet federal responsibilities to manage trust governments. This was implicity recognized by Congress when it provided separate authority in Section 104 for grants to aid tribal governments themselves. Although it may be said that the federal funds involved in 638 contracts are for public purpose of support or stimulation, this does not dispose of the question of whether a grant or contract should be used when a tribe or nation exercises rights under 638 and contracts to perform a service for the federal government by delivering the pograms involved.

In conclusion, we are convinced that the proposed rule is not required as a matter of law, and is contrary to the policy of Indian Self-Determination and the government-to-government relationship upon which the law is based. These comments are submitted on behalf of the Penobscot Indian Nation by

TIM LOVE, *Governor.*

Mr. TAYLOR (acting chairman). Please proceed.

Mr. ANDRADE. For the record, my name is Ron Andrade. I am the executive director for the National Congress of American Indians.

We want to thank the committee for the opportunity to present testimony in support of the amendment which is intended to relieve Indians of Public Law 95–224, the Federal Grant and Cooperative Agreement Act of 1977. We are referring to S. 973.

I will not take up a lot of the committee's time because I was fortunate enough to hear the Bureau of Indian Affairs and the Indian Health Service say that they are in support of this.

I think, for the record, we are concerned that we never felt that there should have been any confusion about this bill in the first place. If this bill had been read in the best interest of the tribes—not in the best interest of the Solicitor's Office or some other office—I do not think you would have had to have gone through this kind of procedure just to relieve the tribes.

We, for the record, did a review of section 4 and 5 of 95–224. Section 4.2 provides for contracts whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate. This is precisely what 93–638 was intended to do on behalf of the tribes; that if they felt it was appropriate, then that was allowed.

Section 5.2 of 95–224 provides for grants if no substantial involvement is anticipated between the executive agency and the agency receiving the grant. We do not think—and I can say this from pure experience—that there is not a tribe in the world that will tell you that there is not extensive involvement of the BIA, in a 638 contract. The BIA is constantly monitoring, constantly involved, constantly fooling around or butting in. We do not think that 5.2 would relieve that.

Since the Congress specifically provided that contracts be used in transferring programs to tribes, we feel that 93–638 should have prevailed all along.

There is another part that we felt was extremely important. Again, I will do this briefly.

We expressed the concern last year that the provision of 95–224, calling for competitive grant awards, in section 2(b)(3)—this section alone we feel would jeopardize 93–628 contracts.

Since I told them I would do it, I will reference that we took this from anaysis, in part, done by the Red Lake Band; 93–638 provides for contracts with tribes to perform services. There was never any intention by Congress to make these contract awards competitive. We testified last year, and we testify again for the record, that we feel that any attempt at competitive awards would be very injurious to the tribes and would not be in their best interest.

Again, in the interest of time there is only one further statement that we would like to make. The BIA, when the 95–224 was originally passed last year, really performed a knee-jerk reaction and ordered immediately all grants stopped, that is, all contracts stopped and all grants begun.

That caused tremendous confusion for the contract schools, for many of the tribes under contracts, for many of the groups, including NCAI. We approached the BIA. We had a contract. They told us they could no longer give us a contract because we now had to move to grants. Last year or just a month ago, I went in to negotiate my grant and they told me we could not do it, but that we had to go back to contracts.

Then we said that we thought we were under 95–224, and they said yes, but that they would have to get a Solicitor's opinion.

We only mention this as an example. We feel that the BIA now, with the amendment, will immediately throw out the grants and move every body back to contracts. We think that will make for a tremendous amount of confusion.

I was pleased to hear, as Dr. Rhoades testified, that there would be provisions for consultations with the tribes or organizations as to what methods they might want to use. We think that is extremely important.

We would request that this committee instruct the BIA and IHS that the amendment does not preclude the use of grants and that any effort on their part to create confusion will be subject to committee review. We feel that if any example could be given from NCAI's problems last year in contracts versus grants that it is in the best interest of the tribes that the committee instruct both departments of that.

Additionally, we have submitted for the record some of the statements written by some of the tribes which we have received. In particular, we have included a letter written by Tim Love, Governor of the Penobscot Indian Nation in Maine.

We are extremely supportive of this. I want to close our testimony by saying that. We think that there has been significant confusion caused by this attempt to move from contracts to grants. We think that this bill, S. 973, will go a long way toward eliminating that confusion and, more particularly, goes a long way toward supporting the efforts of this Congress under 93–638 which allows the tribes to make the decision, not the Federal departments to make the decisions on contracting of programs.

With that, I thank you for the time.

Mr. TAYLOR. Thank you for your testimony, Mr. Andrade.

With this, we will conclude the hearing. We have no further witnesses.

We will be happy to hold the record open for 10 days for any additional comments.

[Whereupon, at 3:10 p.m., the hearing was adjourned.]

APPENDIX

Additional Material Received for the Record

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Honorable William S. Cohen
Chairman, Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of December 13 and your comments on the Bureau of Indian Affairs' (BIA) proposed regulations (P. L. 93-638). By November 13, the final day of the public comment period for the proposed regulation revisions, we had received comments from more than 120 Indian tribes and tribal organizations. The comments were generally opposed to the main thrust of the revisions and many continue to question the applicability of P. L. 95-224 to Tribal Governments.

As you know, one of the objectives we have is to increase the number of Bureau programs being conducted by tribes under contract or grant. We believed that use of the grant mechanism would place the tribes and the Bureau in an improved Government-to-Government relationship, one that would encourage more tribes to operate Bureau programs. However, following review of the comments it is our concern that if we implemented the proposed regulations the result would be fewer, not more, programs being operated by Indian tribes.

In view of the above, we are postponing our plans to move forward with publication of the proposed regulations in final. We are, rather, exploring other alternatives and have specifically asked our Solicitor to reexamine the issue to help us determine options under which they might be withdrawn. Nevertheless, even if this were done, we believe some significant revisions are required in the current P. L. 93-638 regulations. This is especially true in matters relating to strengthening Bureau and Tribal accountability in administration of programs.

I appreciate your continued interest in this matter and look forward to receiving the results of the evaluation by the Comptroller General.

Sincerely,

Assistant Secretary - Indian Affairs

The SHOSHONE-BANNOCK TRIBES

FORT HALL INDIAN RESERVATION
PHONE (208) 238-3820
238-3822
238-3818
238-3817
238-3816
238-3815

TRIBAL ATTORNEY'S OFFICE
P. O. BOX 306
FORT HALL, IDAHO 83203

April 19, 1983

RECEIVED APR 25 1983

Senator Mark Andrews
United States Senate
Washington, D.C. 20510

Dear Senator Andrews:

I understand that you recently introduced legislation to amend the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638) to provide that the Act would not be subject to the requirements of the Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-224). I would like you to know that the Shoshone-Bannock Tribes support your legislation which clarifies that contracting, not grants, will remain as the primary means of implementing P.L. 93-638.

The Shoshone-Bannock Tribes are opposed to changing P.L. 93-638 contracts to grants. P.L. 95-224 was passed by the federal government for States and local goverments. P.L. 93-638 was passed specifically in recognition of the federal government's special legal relationship with Indian Tribes and the resulting federal trust responsibility for Indians. The proposed P.L. 93-638 regulations published in the Federal Register on September 13, 1982 are totally inconsistent with historical principles encompassing the federal Indian relationship and 93rd Congress' findings and declaration of policy as contained in P.L. 93-638.

We agree that regulation changes and stream lining of procedures pertaining to P.L. 93-638 contracts may be justified. However, we strongly oppose the grant system as a replacement for the contract process. An official resolution of the Shoshone-Bannock Tribes is enclosed in support of this position.

Your attention to this problem is greatly appreciated.

Sincerely yours,

R. Willis Dixey, Chairman

RWD/dl
enclosure

RESOLUTION

WHEREAS, the Shoshone-Bannock Tribe is aware of the recommended change that the Bureau of Indian Affairs has proposed for P. L. 93-638 regulations; and

WHEREAS, the Shoshone-Bannock Tribes is in harmony with the "Affiliated Tribes of Northwest Indians" resolution by vehemently opposing such a change, ATNWI resolution 82-5, dated January 14-16, 1982; and

WHEREAS, the federal grant and cooperative agreements Act P. L. 95-224 is a "general law" which should not be applied in a manner which would diminish or adversely impact Indian Tribal Rights in the absence of expressed congressional intent; and

WHEREAS, this general law does not recognize Indian people as a unique sovereign entity, but as a so-called general public; and

WHEREAS, Indian people have to compete with State and local governments or among themselves; and

WHEREAS, the BIA is proposing to violate P. L. 93-638 with an erroneous application of P. L. 95-224, the Federal Grants and Cooperative Agreements Act, which would change the federal relationship from an obligatory contract relationship to a supplemental and discretionary grant relationship; and

WHEREAS, the proposed changes would, at minimum:

A. Distort the federal treaty trust obligation to provide essential services to Indian people.

B. Extinguish rights, privileges, and protections presently found available under P. L. 93-638 contracting regulations; now

THEREFORE, BE IT RESOLVED BY THE BUSINESS COUNCIL OF THE SHOSHONE-BANNOCK TRIBES, that this Tribe supports the continuation of support for Indian Self-Determination and Education Assistance Act (P. L. 93-638) and needed revisions as determined by Tribes, of the Contract process, and that the written expressions should be forwarded immediately to the appropriate departments and that the Shoshone-Bannock Tribes request that draft regulations be extended until field oversight hearings, information distribution and extensive consultation are held at the earliest time; and

BE IT FURTHER RESOLVED, that the Shoshone-Bannock Tribes requests U.S. Congress technically amend P. L. 95-224 to clarify that P. L. 95-224 does NOT apply to Indian Tribes and Tribal Organizations, and the Indian Self-Determination Act of 1975.

CTRT-82-6534

Resolution - Dated 11/9/82
Page 2.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat., 984) as amended and under Articel VI, Section 1 (a,r) of the Constitution and By Laws of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho.

Dated this 9th day of Novemt r, 1982.

R. Willis Dixey

R. Willis Dixey, Chairman
Fort Hall Business Council

S E A L

CERTIFICATION

I HEREBY CERTIFY, that the foregoing resolution was passed while a quorum of the Business Council was present by a vote of 6 in favor, and 1 not voting on the date this bears.

Jennifer Christy

Jennifer Christy, Executive Secretary
Fort Hall Business Council

CTRT-82-6534

BRISTOL BAY AREA HEALTH CORPORATION

P.O. Box 10235
DILLINGHAM, ALASKA 99576

PHONE: (907) 842-5201

1983 MAY 10 AM 8 11

May 4, 1983

RECEIVED MAY 10 1983

The Honorable Mark Andrews,
Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Re: S.973

Dear Senator Andrews:

Bristol Bay Area Health Corporation (a P.L. 93-638 contractor and manager of the Bristol Bay Area Service Unit) a tribal organization representing 32 tribes (villages) in a 40,000+ square mile area of Southwest Alaska is in full support of the passage of S.973.

We concur with the letter of 4/28/83 sent to you by S. Bobo Dean, Esquire our attorney (attached) and request DO PASS on S.973.

Thank you.

Sincerely,

Robert J. Clark
Executive Director

cc: Senator Stevens
Senator Murkowski
Senator McClure
Representative Don Young
Representative Sidney Yates
Alaska Native Health Board
Bristol Bay Native Corporation
Bristol Bay Native Association
Bristol Bay Area Health Corporation Executive Committee

attachment: 1

RJC:ksm

5/3/83

HOBBS, STRAUS, DEAN & WILDER
LAW OFFICES
1735 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20006
(202) 783-5100

S. BOBO DEAN (DC, NY)
CHARLES A. HOBBS (DC)
FRANCES L. HORN (DC, WV)
JOSEPH J. B. RYAN (DC, TX)
JERRY C. STRAUS (DC)
LEROY W. WILDER (OR, DC, CA)

CAROL L. BARBERO (DC)
R. RANDY HARRISON (OR)

JERRY R. GOLDSTEIN (DC, MD)
MICHAEL P. GROSS (NM, AZ)
KENNETH F. TWOROGER (DC, FL)
OF COUNSEL

PORTLAND OFFICE
820 S. W. 2ND AVENUE, SUITE 200
PORTLAND, OREGON 97204
(503) 295-2051

NEW MEXICO AFFILIATE
ROTH, VAN AMBERG, GROSS
AMARANT & ROGERS
P.O. BOX 1447
SANTA FE, NEW MEXICO 87501
(505) 988-8979 AND 983-7318

FLORIDA AFFILIATE
TWOROGER, SADER & FERRELL
2651 NORTH FEDERAL HIGHWAY
FORT LAUDERDALE, FLORIDA 33338
(305) 565-8880

April 28, 1983

The Honorable Mark Andrews
Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Re: S.973

Dear Senator Andrews:

We are enclosing herewith comments which we previously filed on behalf of a number of our tribal clients objecting to the proposal of the Bureau of Indian Affairs to change its regulations under Public Law 93-638. The changes, according to the Bureau, were required by Public Law 95-224.

As you know, the Office of General Counsel of the Department of Health and Human Services and the Solicitor of the Department of the Interior reached different conclusions as to the application of Public Law 95-224 to tribal contracts under Public Law 93-638. We believe that the HHS General Counsel is correct -- IHS and BIA are not required to use grant instruments under Public Law 93-638. However, the Congress should resolve this dispute between federal agencies clearly and unmistakably by enacting S.973.

As the Bureau has indicated its intention of moving forward with other proposed changes in the 638 regulations which curtail tribal self-determination rights by strengthening Area and Agency office powers to resist or terminate tribal contracts and to impede the contracting of new school programs, we ask that you include the following language in your report:

> The Committee is concerned at reports that the Bureau still intends to make changes in its regulations under P.L. 93-638 which would limit tribal

> procedural rights in obtaining and keeping 638 contracts to operate Bureau programs. The Committee reminds the Bureau that proposed changes in 638 regulations must be cleared with this Committee and that it intends to scrutinize such regulations carefully to insure that any changes do not undermine the Indian self-determination program enacted by Public Law 93-638.

Our clients have also experienced repeated problems with both Indian Health Service and the Bureau of Indian Affairs as a result of unilateral reductions in finding levels in violation of 638 contracts where such reductions do not result from a Congressional mandate but from an administrative decision to spend the money somewhere else. Most recently, the Bureau has unilaterally docked tribal 638 contracts to finance the operation of the Bureau's non-functional accelerated data processing system. While we believe that these actions are illegal, tribes should not be compelled to expend scarce resources to contest them through contract dispute proceedings. Consequently, we request that the Congressional intent shall be made crystal clear by amending Public Law 93-638 through adding the following sentence at the end of section 106(h):

> The Bureau shall not reduce the funding levels of contracts previously negotiated unless the Congressional appropriation providing such funds explicitly requires such reductions.

This amendment may be explained in report language, as follows:

> The Committee is aware that the Bureau of Indian Affairs and the Indian Health Service must negotiate contracts under the Act in advance of Congressional appropriations and that regulations and policy provide that negotiated budget levels may be subsequently reduced without the contractor's consent only when available funds are reduced for reasons beyond agency control. However, recently both agencies have made unilateral reductions which go beyond any Congressionally-mandated reductions.

The intent of our amendment to section 106(h) of the Act is to insure that negotiated funding levels are reduced only as a result of negotiations or when legally required. Having agreed on a funding level with a tribe, the Government should not -- five or six months into the contract year -- reduce contract budgets unless the Congress has appropriated less than the levels on the basis of which the contract was negotiated.

We respectfully request that this letter be included in the record of your hearing on S.973 held on April 28, 1983. We will be glad to discuss these matters with you or your staff if any additional information or clarification is required.

Sincerely,

HOBBS, STRAUS, DEAN & WILDER

S. Bobo Dean

○